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THE
A C T S
OF
S E D E R U N T

OF THE
Lords of Council and Session,

FROM THE
12th NOVEMBER 1790, to the 11th of MARCH 1800.

Scotland:-
Published by Authority of the Court. *of Session [Collections of Acts]*



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1800.

8th March 1799.

“ ON the motion of the Lord Advocate, as Dean of Faculty, the Lords allowed and authorised the Collectors of Decisions, appointed by the Faculty of Advocates, to publish the Acts of Sederunt passed since the late publication of them in 1790, and in future ; and, for that purpose, to have access to, and take excerpts from, the Sederunt Books of the Court.”

In virtue of this authority, the following publication contains every entry in the Books of Sederunt, which appeared to the Collectors of Decisions to be of any general importance.



ACTS OF SEDERUNT
OF
SEDERUNT

OF THE
COURT OF SESSION.

3^d February 1791.

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Bond by Douglas, Heron and Company, to the Court, ordered to be delivered up.

THIS day, the Lords authorised the Lord President and Lord Swinton, who had the keys of the prefs where the writings belonging to the Lords are deposited, to deliver up to Mr George Home, for Douglas, Heron and Company, the bond granted by that Company to the Lords, and the bond of corroboration by their directors, for L. 22,700, the stock belonging to the Court, now paid by that Company to the Receiver-General of the taxes for Scotland, in terms of the act of Parliament.

16th February 1791.

Prorogation of the Act of Sederunt with regard to Replies.

THE Lords prorogate and renew the act of sederunt of the 10th December 1777, concerning replies in the Inner-House, with the addition contained in the prorogation of the 5th February 1783, which is here referred to, and that to the first sederunt-day of March 1792; and declare the said act to continue to that day, and no longer.

Committee named, to consider Dues payable to the Keeper of the Inner-House Rolls, Macers, and Extractors.

THE Lords nominate and appoint the Lords Justice-Clerk, Swinton and Dunfinnan, as a committee of their number, of whom Lord Justice-Clerk to be convener, and any two to be a quorum, to consider any new regulations that may be necessary with regard to the dues payable to the keeper of the Inner-House rolls, and to the macers of Court.

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They also nominate and appoint the Lords Justice-Clerk, Eskgrove and Dunfinnan, as a committee, Lord Justice-Clerk, convenor, and any two to be a quorum, to consider any new regulations that may be necessary with respect to the dues in use to be paid to the extractors in the clerks' offices.

24th February 1791.

Regulations with regard to Box-days in the Spring Vacation.

THE Lords declare the box-days in the ensuing vacation to be Thursday, the 14th, and Thursday, the 28th April, next; and appoint intimation thereof to be made on the walls of the Inner and Outer House, in common form, and to be entered in the books of federunt.

It is understood, that in general all answers, particularly to reclaiming petitions against Inner-House interlocutors, and other papers ordered for the box-days, are to be boxed on the first of the above days, unless there be a reasonable excuse; in which case the fine will be dispensed with, if they are boxed on the second box-day, except in the case of additional petitions and replies, which must be put in upon the first box-day, without any dispensation; and the answers to these additional petitions, together with the duplicates, must be put in on the second box-day.

11th March 1791.

Act, allowing an Additional Fee to the Macers, and Keepers of the Parliament House.

WHEREAS it has been represented on the part of the macers, and likewise on the part of the keepers and under-keepers of the Parliament House, That by reason of the late statutes concerning bankruptcy, and other alterations which have taken place in the forms of proceeding before the Court, their fees and emoluments have fallen below what they were formerly:—The Lords of Council and Session having this day resumed the consideration of the several applications made by them, and being satisfied that they ought now to have some further allowance, do hereby enact and ordain, That from and after the date hereof, the macers shall be entitled to exact, in time coming, One shilling upon the first inrolment of every cause in the Outer-House, in addition to their present fees; the same to be collected by the keeper of the Outer-House rolls, along with his own fees:—And further, the said Lords of Council and Session do hereby authorise and require the deputy clerks of the bills to exact One shilling upon the presenting of every bill of suspension, and every bill of advocacy, for which he shall be allowed 2½ per cent. upon the sum so collected for his own trouble: And the said One shilling upon every bill of suspension and bill of advocacy, shall, at the end of each session, and of each vacation, be distributed among the said macers, and the said upper and under keepers of the Parliament



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Parliament House, in such manner as shall be afterwards directed by the said Lords.—And whereas, the office of one of the macers, or the right of presenting him, is hereditary, and has been in use to be exercised by a deputy, the said Lords do hereby declare, that the fourth share of the said additional fees upon inrolments, and upon bills of suspension and advocacy, which is meant to be appropriated to the said macers, shall belong to the said deputy alone, and no part thereof to the principal; and that, in time coming, no deputy shall be received to officiate in the said office, until it be explained, upon oath, if required, what transaction has been made between the principal and the deputy, and until the Court is satisfied that the deputy is to have a sufficient and reasonable allowance for enabling him to exercise the duties of the office.

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And appoint this act to be recorded in the books of sederunt, and to be printed and published, in the usual manner, for the information of all concerned.

Eodem die.

Act, regulating the Fees of the Keeper of the Inner-House Rolls.

THE Lords of Council and Session having taken into their consideration an application from the keeper of the Inner-House rolls, for ascertaining and regulating his fees,—they appoint and ordain, That from and after the date hereof, the fees and emoluments payable to him shall be as specified in the following table: and prohibit and discharge him to demand or receive any fees or gratuities, other than those contained in the said table, upon any pretence whatsoever:—And further, the Lords appoint and ordain the keeper of the said rolls to affix on the walls of the Outer-House, each day, before one o'clock, a roll of the single bills, in the order in which they are to be moved by the Lords the succeeding day; for the making up of which roll, he is expressly prohibited and discharged to ask or receive any other fee than that specified under article fifth of the following table.

I. That for every petition, information, memorial, condescendence, objection, answer, reply, duply, or any other paper in a cause appointed by the Lords, there shall be paid the sum of Five shillings each paper at inrolling. Short Roll.

II. That for every action of proving the tenor, sale, aliment, *cessio bonorum*, account of expence, report from a Lord Ordinary upon a remitted petition for money, getting up bond of caution, or any other cause, there shall be paid by the parties the sum of Five shillings in whole for each inrolment. Ordinary Action and Summar Rolls.

III. That for inrolling every prepared state, or memorial and abstract, in a sale, there shall be paid by each party the sum of Five shillings, or Ten shillings in whole; and no additional fee to be charged for memorials or prepared states. Concluded Cause Roll.

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Single Bill
Roll.

IV. That for a hearing in presence, there shall be paid by each party the sum of Ten shillings for each day's pleading.

V. That for every reclaiming petition refused by the Lords, without an answer, there shall be paid by the petitioner the sum of Two shillings and sixpence.

VI. That there shall be paid at the admission of every notary-public the usual fee of Five shillings.

VII. That in no case shall there be more than one inrolment before advising; but a cause shall not be considered as inrolled, although appearing in a list upon the wall, until it be entered in the book of the inner-keeper.

And appoint this act to be recorded in the books of sederunt, and to be printed and published in the usual manner, for the information of all concerned.

2d June 1791.

Sentence against John Cooper as a Fraudulent Bankrupt, and against John Fotheringham for assisting him.

THE Lords having this day resumed consideration of the cause at the instance of Messrs Barr and Ronald, merchants in Glasgow, and other creditors of John Cooper, late merchant in Aberdeen, with consent of his Majesty's Advocate, and the Lord Lyon, king at arms, against the said John Cooper, Jean Hunter, his mother, Agnes and Jean Coopers, his sisters, and John Fotheringham, residing at Aberdeen, with their interlocutor of 19th May last, finding John Cooper a fraudulent bankrupt, and John Fotheringham to have been aiding and assisting him in secreting his effects from his creditors; they ordain the said John Cooper to be carried back from the bar to the tolbooth of Edinburgh, therein to remain until Thursday, the 9th of June current; then to be delivered to the Sheriff of Edinburgh, to be transmitted from Sheriff to Sheriff, until he be imprisoned in the tolbooth of Aberdeen, therein to remain until the first public market-day in the town of Aberdeen; and grant warrant to the Magistrates of Edinburgh, the different Sheriffs, and the Magistrates of Aberdeen, to receive, transmit, and imprison and detain him accordingly: and upon the said market-day, grant warrant to and ordain the Magistrates of Aberdeen to cause carry him forth of the said tolbooth to the market-place of Aberdeen, where he is hereby ordered and appointed to be put upon the pillory, there to stand for a full hour, from twelve o'clock mid-day to one o'clock afternoon, having a label or paper affixed on his breast, with these words, *A Fraudulent Bankrupt*, and immediately thereafter they ordain the said John Cooper to be set at liberty: And in like manner ordain the said John Fotheringham to be carried back from the bar to the tolbooth of Edinburgh, there to remain for the space of three kalendar months from this date, and then to be set at liberty; and grant warrant to and ordain the Magistrates of Edinburgh to receive and detain him till the said day; and dispense with the reading

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reading hereof in the minute-book, and ordain these presents to be recorded in the books of sederunt. 1791.

15th June 1791.

Act prolonging the Time for Lord Ordinaries sitting in the Outer-House.

THE Lords considering that their act of sederunt of 11th March 1788, intituled, "Act for prolonging the time of the Lord Ordinaries sitting in the Outer-House," expires on the 1st day of July next, do resolve to continue the same for another year; and, therefore, do hereby declare, that the said act shall continue in force until the 1st day of July 1792; and ordain this prorogation and act to be fixed on the walls of the Inner and Outer House, in usual form.

17th June 1791.

Resolution about reclaiming Petitions.

THE Lords observing that of late several applications have been made to them by short petitions, praying for leave to give in full reclaiming petitions at some future day, which is an evasion of former acts of sederunt, limiting the time for giving in reclaiming petitions, do declare, that they will not on any account receive such petitions in time coming; and prohibit and discharge the clerks to move or write upon such petitions; and appoint this resolution to be entered in the books of sederunt, and published on the walls of the Inner and Outer House, in the usual form.

Eodem die.

Committee to meet with the Magistrates and Advocates for repairing the Inner-House.

THE Lords appointed the Lords Eskgrove, Swinton and Henderland, as a committee of their number, whereof any two to be a quorum, and Lord Eskgrove to be convener, to meet with a committee of the Magistrates and Town-Council of the city of Edinburgh, and the Dean and a committee of the Faculty of Advocates, in order to take into consideration what improvements, alterations, or repairs, ought to be made on the Inner-House, to render it more convenient for the Lords, the Faculty, and other members of Court; and recommend to the committee to report their opinion to the Court with all convenient dispatch.

29th June 1791.

Committee for Charity Workhouse.

THE Lords continued the Lords Justice-Clerk, Eskgrove, Swinton, Henderland and Rockville, as their committee for managing the affairs of the Charity Workhouse for the ensuing year*.

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* A similar committee is appointed annually.

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9th July 1791.

Act ordaining Common Agents in Rankings and Sales to lodge a State of the Proceedings had in such Processes.

THE Lords having observed, from some late proceedings before the Court, that several processes of ranking and sale, now depending, have been a very long time in Court; and being desirous to know what is the present state of all the different processes of ranking and sale which are actually in dependence before them, do therefore hereby enact and ordain, That the common agent in every process of ranking and sale, now depending in the Court, shall, in the course of the ensuing vacation, betwixt and the 13th day of October next, make up an exact state or summary of the proceedings in such process or processes conducted by him, showing at what period the same was first brought into Court, what steps have since been taken, likewise the extent of the funds and of the debts, as far as the same have been ascertained, and the present situation of the said process or processes, and the causes of any delay or obstruction which may have happened; subjoining thereto an account of the expences which have been incurred, and the sums drawn upon interim warrants, either by the creditors or the common agent; together with an account of what is still due to the common agent for disbursements and trouble in carrying on the business:—And the Lords ordain printed copies of the said state to be delivered into the boxes upon the said 13th day of October next, and copies thereof to be delivered to the known agents for the different parties appearing in the ranking and sale, or division of the price; the expence of which state is to be defrayed out of the common fund, and charged in the agent's account:—And ordain this act to be inserted in the books of sederunt, and printed copies thereof affixed on the walls of the Inner and Outer House.

28th February 1792.

Act concerning Replies made Perpetual.

THE Lords declare the act of sederunt of the 10th December 1777, concerning replies in the Inner-House, with the addition contained in the prorogation of 5th February 1783, which is here referred to, to be perpetual; and appoint intimation thereof to be made on the walls of the Inner and Outer House, in common form, and to be entered in the books of sederunt.

3d March 1792.

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Committee for regulating the Affize of Bread with the Magistrates.

THE Lords nominate and appoint such of their number as shall happen to be in town or neighbourhood, during the ensuing vacation, to be a committee to meet with the Lord Provost and Magistrates of Edinburgh, or any committee to be named by them, in order to consider the present laws for regulating the affize of bread, and the proper way for putting the same into execution, and also the necessity and propriety of applying to Parliament for any new regulations on that subject, and authorise the committee to concur in what measures they may judge proper and expedient for that purpose.

14th June 1792.

Act removing the Market-Cross of Stirling.

ON the 26th May last, at moving the petition presented to the Court, for and in name of the Magistrates and Town-Council of the burgh of Stirling, praying, for the reasons therein mentioned, the Lords to authorise the petitioners to take down and remove the present Cross, &c. appeared Mr John Moir, counsel for the petitioners, and represented, That since the petition was given into Court and intimated, the Lord Henderland had been at Stirling on the Circuit, and took the trouble to inspect the situation proposed for the new market-cross; but another situation appeared to his Lordship more eligible, to wit, a pillar to be placed on the south, directly opposite to the present Cross, and set up between the street and the foot-pavement at letter C, as delineated upon a section, across the Broad Street of the burgh, produced, and this proposal of his Lordship had met with the approbation of all parties concerned; therefore craved, that the Lords would be pleased to approve of the proposed alteration, and declare that the said pillar shall be held as the market-cross, and that all executions and intimations made there shall be as valid and effectual as if such executions had been made at the old market-cross: Whereupon Mr Allan Maconochie, advocate, procurator for those complaining of the election of the petitioners, consented to what was proposed.

The Lords having resumed consideration of this petition, they approve of the foresaid proposal for the Magistrates of Stirling, and declare, That all executions and other intimations made at the pillar to be placed on the south, directly opposite to the present Cross, and set up between the street and the foot-pavement, at letter C, as delineated upon the section produced in process, across the Broad Street of the said burgh of Stirling, shall be held to be as valid and effectual as if such execution had been made at the old market cross; and they ordain these presents to be recorded in the books of
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1792. federunt, and to be published at the present market-crofs of Stirling, that the same may come to the knowledge of all parties concerned; and decern,

(Signed) ILAY CAMPBELL, I. P. D.

26th June 1792.

Act prolonging the Time for Lord Ordinaries sitting in the Outer-House, to 1st July 1793.

THE Lords taking into consideration, that their act of federunt of 11th March 1788, intituled, "Act for prolonging the time of the Lord Ordinaries sitting in the Outer-House," expires on the 1st day of July next, do resolve to continue the same for another year; and therefore, do hereby declare, That the said act shall continue in force until the 1st day of July 1793; and ordain this prorogation and act to be affixed on the walls of the Inner and Outer House, in the usual form.

10th July 1792.

Order on Common Agents in Ranking and Sales depending, to lodge States.

THE Lords renew the act of federunt, and order of 9th July 1791, upon the common agents in every process of ranking and sale now depending in Court; and appoint printed copies of the states to be put into the boxes on the 11th of October next, and delivered to the known agents of the parties, as directed by the former order. The states now to be given in the processes, which depended at the date of their former order, to begin where the former states ended; and ordain this act to be entered in the books of federunt, and copies thereof affixed on the walls of the Inner and Outer House, in the usual manner.

22d December 1792.

Interim Keeper of the Register of Seifins of Renfrewshire appointed.

THERE was given in and presented to the Court a petition for and in name of James Hill, writer in Glasgow, which, by the interlocutor after insert, was appointed to be insert in this federunt book. The said petition humbly shewing, That some years ago, Mr Laurence Hill, writer to the Signet, lately deceased, was appointed keeper of the register of seifins for the shire of Renfrew, by commission from the Crown; and he named the petitioner his depute, who has accordingly acted in the regular discharge of the said office: That by the death of the said Laurence Hill, the said office has become vacant; and as no commission has yet been given out by his Majesty, it becomes necessary for the
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lieges that some person should be appointed to the said office, so as the registration of the feifins, &c. which have been presented since the said Laurence Hill's death, and those which may hereafter be presented, may proceed as usual, until a new commission be issued by the Crown. The records and books of office are in the petitioner's possession.—May it therefore please your Lordships, to appoint an interim keeper of the register of feifins for the said county of Renfrew, in place of the said Mr Laurence Hill, deceased, until a commission for a new keeper shall be obtained from the Crown, or till further orders from your Lordships; and to grant to such interim keeper to be named by your Lordships, powers to record feifins, &c.

According to justice, &c.

AR. CAMPBELL.

Edinburgh, 22d December 1792.

The Lords having heard this petition, they grant warrant to, empower and authorise the petitioner to act as clerk to, and keeper of, the particular register of feifins, reversions and others, for the shire of Renfrew, with power to him to execute and perform all the duties and functions of the said office, as specified in the commission to the said deceased Laurence Hill, ay and until a new commission, appointing a clerk and keeper of the said register, shall be obtained, or until this warrant shall be recalled: And find the petitioner is entitled to the dues and emoluments of the office, during the time he officiates therein, in virtue hereof; for doing of which, an extract of this present act shall be a sufficient warrant; and ordain this petition, with this deliverance thereon, to be insert in the books of federunt, and also in the record of the said particular register for the shire of Renfrew.

ILAY CAMPBELL, I. P. D.

17th January 1793.

Papers to be boxed for the Collectors of Decisions.

UPON the suggestion of the Dean of the Faculty of Advocates, the Lords ordain the agents of this Court, in time coming, to put a copy of all printed papers presented to the Court, not only in a box to be prepared for the use of the Library belonging to the Faculty, but also in the box of each of the two Collectors of the Decisions; and appoint this order to be entered in the books of federunt, and published on the walls of the Inner and Outer House in the usual manner.

23d January 1793.

Visitation of the Magistrates of Edinburgh.

THIS day the Lord Provost, Magistrates and Town-Council of Edinburgh, saluted the Lords as usual in their formalities, and represented, That they had several matters of consequence to lay be-

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1793. fore their Lordships, regarding the police of the city, and entreated that the Lords would name a committee of their number to meet with the Magistrates, from time to time, as their affairs may require.

The Lord Provost also stated, That the Magistrates had used their utmost endeavours to discourage and suppress several unlawful associations and meetings among the lower classes of the people in this city, under pretence of reforming our present happy constitution, and that he had the satisfaction to inform the Court, that they had been very successful in preventing these unlawful and seditious meetings.

The Lord President, in name of the Court, made the following answer, which the Lords appointed to be entered in the books of sederunt, in order to perpetuate their entire approbation of the sentiments expressed by his Lordship.

My Lord Provost,

The whole Court will join me in opinion, that your Lordship and the other Gentlemen of the Magistracy and Council, are entitled to the thanks and approbation of your fellow citizens, for the activity and zeal which have marked your public conduct, at a time when, from various causes, it is well known that a more than ordinary exertion was required.

It was with equal surprise and concern that this Court learned, as well by the public voice of the country, as by his Majesty's proclamation and the proceedings in Parliament, that a spirit of sedition had arisen in different parts of the kingdom,—that alarms had been excited, and that designing or deluded men were busy in their endeavours to poison the minds of the people, to mislead them by falsehood, and to sow the seeds of anarchy, mischief, and disorder.

To us, the Judges of one of the Supreme Courts, whose official situation had intimately connected us with the law and constitution of our country in church and state, long ago established, and gradually (as we thought) improved, it could not fail to be unwelcome news, when we were told that the British constitution was all wrong; that it either rested upon unsound principles, or had fallen into decay; that the Legislature itself was corrupt, civil liberty extinct, and the people groaning under oppression. Happy it was that such daring assertions admitted of an easy detection.

Let any man who is not blinded by prejudice, look around him, and say, what marks or symptoms he can find here of an oppressed and a ruined people. Wherein does the misery consist? Is it in the extended commerce, manufactures, and agriculture of the country,—or in the costly and substantial edifices which are every day arising in the towns,—or in the additional numbers and increased wages and pay of artificers, workmen, and labourers of all kinds, produced by the flourishing state of the country, beyond all example in former times? Have we not complete proof that the industrious are happy; that Britain has attained to a high degree of prosperity; and in a word, that the cry of grievance, however applicable to the old state of France, and still more to the present, has no foundation here but in gross deception?

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Let me ask any candid man what indication he observes of want of *liberty* in any part of Great Britain? It was long ago pronounced from the highest tribunals both of England and Scotland, as a legal truth, "That the air of Britain was too pure for any person who was not free, to breathe in." Thus, the moment any subject of another country sets foot on British ground, his condition becomes altered; he is taken under the protection of the laws of Britain, and is a free man, whatever his former state may have been. Neither have we different laws for the high and the low,—the rich and the poor. The laws of Britain are the same to all; and the rights of all men are by them equally secured.

We have no occasion to plant the Tree of Liberty in this country; for, here it already grows and flourishes; and I trust in God, that no storm will ever shake it;

"Ipsa hæret scopulis, et quantum vertice ad auras

"Ætherias, tantum radice in tartara tendit."

I need not observe, that what is meant by *Liberty*, is not the power of doing wrong; but *civil liberty*, restrained by law, for the mutual benefit of all who enter into a formed society of any kind, which is the sense that even the most sanguine republican must necessarily affix to it, as without such controlling power, the bonds of society could not for a moment subsist, nor would life itself be secure.

The principle of the British Constitution is *liberty and property*, and a learned author, Dr Franklin, who surely was not unacquainted with the nature of a free government, lays it down in one of his books, "that *liberty and property* form the basis of abundance." But these terms are now changed upon us, and in place of them *liberty and equality* are sounded in our ears; a phrase of dark and mysterious meaning, well fitted to convey into ignorant minds those indistinct and inexplicable dreams of equal power, equal condition, and equal property, which, were it possible to realize them, would go at once to the annihilation, not only of all industry and all safety, but even of society in a savage state.

Those who associate in meetings to devise impracticable or unnecessary plans of reformation, sometimes from good design, and oftener from bad, affect to disclaim the pernicious tenets which have been imported to us from another country. They tell us, they have no view to disturb the peace of society, or to encourage licentiousness. Many of them, it is believed, speak sincerely when they use this language; but perhaps they are not aware that their actions have precisely that effect, whatever their intentions may be; for they have brought men together for the purpose of instilling prejudice into their minds, and making them believe that they feel grievances which do not exist. The consequence of this is obvious. They have not duly considered how dangerous it is to tamper with the minds and passions of uninformed men; and how impossible it is to say to a mob, "Thus far shall you go, and no farther."

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As to the proposition of those who have had the hardiness to preach *force* to the people, the example of France might have taught them, that were any such attempt to be made, they themselves would probably be the first victims. He must be ignorant indeed who does not know that a government founded upon the principle of *force*, is *tyranny*, whether the power be lodged in one individual, or in a few, or in many. What is there in the present state of this country, civil or ecclesiastical, that requires the interference of the people in any unusual manner? Is it not false that they are overburdened with taxes? Those who pay the taxes are able to bear them.—Debts ought surely to be discharged, and government must be maintained. A breach of public faith and credit would be attended with the instant ruin of many thousands of innocent families both at home and abroad, besides being most disgraceful in itself. But all this is a burden upon the wealth, the property, and the luxury of the country. Is it not obvious that the wages, the rate of labour, and the prices of work, by which the lower orders of the community are subsisted, do at this moment, and always must, bear a proportion to the riches of the country, and to the general means of living?

We are told that abuses have crept in. Where is the evidence of it? But granting the fact to be so, what is the use of a Legislature, but to pass new laws when they are needed, and to redress wrongs when the common law and former statute laws have not provided an adequate remedy? No human institution ever was complete or perfect at the first moment, and no one who knows any thing of the history of this country, can be ignorant that its constitution, instead of falling into a state of gradual decay, has been much *amended* by a variety of excellent laws, passed at different times, all tending to the same point, that of meliorating the condition of the people. Let me instance a few of those which relate to Scotland; for we have no occasion to go from home. Was it force or tumult that procured our Act of Grace, and other remedies in the case of *Civil Debt*, by which more ample provision is made for personal liberty in this part of the kingdom than exists even in England? to say nothing of our act 1701, which in criminal matters has been considered as the *Habeas Corpus* of Scotland.

Was it by any such means that in the reign of Queen Anne, our national form of worship was established upon a firm basis on the one hand, and toleration upon the other?

Were not the *personal services* of vassals abolished in the reign of George I.? Wardholdings and heritable jurisdictions in that of George II.? It may be said that these last were the fruit of two rebellions. True; but the rebellions had far other objects in view than obtaining any favourable change in the condition of the people. After they were quashed, it was seen that the power of the aristocracy in Scotland had been too great, and this evil was effectually cured by the laws last mentioned.

In the present reign, neither force nor fear occasioned the restitution of forfeited families; the emancipation of colliers and
falters;

falters; the exclusion of revenue-officers in matters of election; the police-board laid aside; and the many encouragements given to arts, navigation, commerce and manufactures, by which this country has become great and flourishing.

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Were it necessary to go further back, we would find, even in less enlightened times, many important laws passed for securing the subjects, both in property and person;—judges named for life, and made independent; leases of land *real*, and the interest of tenants secured; public registers introduced; schools and colleges endowed, by which learning was diffused, and liberality of sentiment promoted, which, joined to the duties of religion, form the true sources of genuine liberty and rational government.

These, and many other wholesome laws, were the spontaneous effect of free and deliberate discussion in Parliament; and it is not unlikely that other improvements may still be made in the same manner. But meetings of the people called to overawe the Legislature, and headed by men who, supposing their intentions to be good, cannot have the necessary evidence before them, must always tend to obstruct and defeat, never to forward, any wise measure. These men ought to be taught, that their meetings are directly in the face of law, as well as good government; and if it be true, that, like Catiline's conspirators, some of them have bound themselves by solemn oaths, the shocking impropriety of this must fill the mind of every sober and thinking man with indignation.

As to the liberty of the press, it must be consistent with the recollection of all of us, how much this has, of late years, overleapt its ancient boundaries; and surely those who have been so audacious in their attacks against all order—all law—all government—every thing decent, peaceable, and becoming,—and have not even spared religion itself, must acknowledge, that hitherto the liberty of speaking and writing, even to excess, has received little check from courts of law.

I have only to add upon the subject of elections, (another ample topic of popular discourse), that if the rights of voting in counties are to be altered or explained, and the ancient constitutions of our boroughs to undergo what is called a *reform*, and if the present time be proper for such disquisitions, this Court will earnestly pray that the following important objects may be kept in view. 1. That the fundamental principles of common law, and permanent justice between man and man, may be as little exchanged as possible for the untried theories of political expediency. 2. That the multiplication of law-suits may be avoided, or at least that some other court than this may be found for the decision of them. And, 3. That the morals of the lower classes of men in the country may be kept as free from the hazard of corruption, as circumstances will admit.

Let us, my Lord, be thankful for the blessings we enjoy. Let us be careful not rashly to shake the ancient fabric of our constitution; for it may be very difficult to rear a better one. Let us examine well every speculative plan of *reform*, a word which has

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1793. of late been much abused; and let us remember, that we owe it to the memory of our forefathers, some of whom bled in the cause of liberty, and to the regard which every man ought to have for his character, the welfare of his family, and the good of his country, to hand down, whole and entire, to our posterity, those invaluable rights, which *we* possess, and which *they* ought to inherit, as the natural result of a free and a happy constitution.

Thereafter, the Lords continued the Lords Justice-Clerk, Alva, Eskgrove, Swinton and Henderland, as a committee of their number, of whom Lord Justice-Clerk to be convener, and any two to be a quorum, to meet with the Magistrates from time to time, and to give them assistance and concurrence in the management of the town's affairs and other matters, mentioned by the Lord Provost to the Lords.

25th January 1793.

Delegates appointed for naming Bursars on Mr Laurence Dundas's Mortification.

THE Lords chose the Lords Justice-Clerk and Stonefield to join a delegate from the Faculty of Advocates, and another from the writers to the Signet, in order to present three bursars to the Humanity Class in the College of Edinburgh, on the foundation of Mr Laurence Dundas.

29th January 1793.

Mr William Charles Little allowed to change his surname to Gilmour.

Unto the Right Honourable the Lords of Council and Session,

The petition of William Charles Little of Libberton, Esq;

Humbly Sheweth,

That by the decease of the late Sir Alexander Gilmour of Craigmillar, Bart. without lawful heirs of his body, the petitioner is now entitled to take up the succession to the estates of Craigmillar and Nether Libberton, as nearest lawful heir of tailzie and provision to the said deceased Sir Alexander Gilmour, Bart. conform to a deed of entail of these estates, of date 16th April 1683: That by the said deed of entail, it is, *inter alia*, provided and declared, "That the eldest heir-female that shall happen to succeed to the said lands, baronies, &c. including all other heirs-portioners, shall be obliged to marry a gentleman of the surname of Gilmour; or who, and the descendants of her body that shall happen to succeed there- to, shall be bound to assume the surname of Gilmour, and use and bear the designation and arms of the family of Craigmillar, as their own proper surname, designation and arms, in all time thereafter."

That,

That, in compliance with the above provision, the petitioner intends immediately to assume the surname of Gilmour, and to use and bear the designation and arms of the family of Craigmillar. But having the honour to be a member of the Court of Session, in consequence of his admission into the Faculty of Advocates, he considers it as his duty, before making any alteration upon the subscription which he has been in use to adhibit to the different papers drawn by him in the course of his practice before your Lordships, humbly to notify his intention of so doing: That as doubts may also be entertained as to the validity of his acts and deeds as a Justice of the Peace for the county of Mid-Lothian under any other subscription, he has been advised to make the present humble application to your Lordships, for leave to alter his subscription, and to assume the surname of Gilmour, in manner directed by the deed of entail above mentioned.

1793.

May it therefore please your Lordships, to authorise and allow the petitioner to alter his subscription in manner above mentioned; and to declare the surname of *Gilmour* a necessary part thereof, whether in public deeds or private transactions, or writing, in all time coming. According to Justice, &c.

HENRY ERSKINE.

Edinburgh, 31st January 1793.

The Lords having heard this petition, and advised the same, they authorise and allow the petitioner to assume the name of *Gilmour*, in terms of the entail referred to in the petition; and to add the same to his subscription in all time coming, both in public and private writings; and appoint this to be inserted in the books of federunt.

ILAY CAMPBELL, I. P. D.

2d February 1793.

Committee to report on the Draught of the Bankrupt-Act.

THE Lords appoint the Lords President, Justice-Clerk, Eskgrove and Swinton, whereof any two to be a quorum, and the Lord President to be convener, as a committee of their number, to consider the draught of a bill for more effectually regulating the management and distribution of the estates of bankrupts in that part of Great Britain called Scotland; and to meet with a committee to be named by the Dean and Faculty of Advocates, and Keeper and Commissioners of the Signet; and to report to the Court.

Appointment

1793. Appointment of an interim Sheriff-depute for the County of Ayr.

ON the 2d day of February current, the following petition was given into the Court, for and in name of James Dalrymple, Esq; Sheriff-clerk of the County of Ayr,

Humbly Sheweth,

That the vacancy of Sheriff-depute of the county of Ayr, occasioned by Lord Craig's being received among the number of your Lordships, on the 22d December last, has not yet been supplied. The loss which the petitioner suffers from this circumstance, as well as the inconvenience to the county at large, is too obvious to require observation. Every process, however important, must stand still, and no new process can be brought, till some person holds the office of Sheriff-depute, either by a commission from the King, or under an interim nomination of your Lordships. Many removings are depending before the Sheriff-court, which cannot be delayed without great inconvenience and loss; and processes of hypothecation, which must be brought within three months of the term of Martinmas, must necessarily become ineffectual unless they can be called before the middle of next month. Applications similar to this have been so frequent, that there can be no occasion for troubling your Lordships with precedents. Indeed, upon a former vacancy occasioned by the death of Mr Wallace, sometime Sheriff-depute of the county of Ayr, your Lordships appointed an interim Sheriff.

May it therefore please your Lordships, to appoint a proper person to act as interim Sheriff-depute of the county of Ayr, with power to hold courts, and exercise the other powers competent to the office, until a Sheriff-depute is appointed in the usual course; and to dispense with the minute-book. According to justice, &c.

GEO. FERGUSSON.

2d February 1793.

The Lords having heard this petition, they supersede the same till Tuesday next.

5th February 1793.

The Lords having heard this petition, they authorise and empower Robert Sinclair, Esq; advocate, to exercise the office of Sheriff-depute within the county of Ayr, until a Sheriff-depute for the said county shall be nominated by the Crown, and he be superseded; and dispense with the minute-book; and ordain this warrant to be insert in the books of sederunt.

15th

1793.

15th February 1793.

Order on Agents and Solicitors to box papers in the boxes of the Professor of the Scots Law, and the Collectors of the Decisions.

UPON application of the professor of Scots law, and likewise from the collectors of decisions, the Lords renew their act of federunt of 29th November 1765, and their order of 17th January last, and appoint the agents and solicitors of this Court, in terms of these orders, to be careful to put all printed papers, presented to the Court, in the boxes of the professor of the Scots law, and collectors of the decisions; and appoint copies of this order to be transmitted to the writers to the Signet, and agents or solicitors; and the professor and collectors to inform the Court of those who shall neglect to give obedience to this order; and further, appoint the same to be affixed on the walls of the Outer and Inner House, in common form; and to be entered in the books of federunt.

15th May 1793.

Act changing the Prison of Dunfermline, until Whitfunday 1794.

A Petition was presented by the Magistrates and Town-Council of Dunfermline, stating, that the petitioners finding it necessary to alter and enlarge the town-house and prison of Dunfermline, the roof was taken off in the course of last vacation; and as it will be unfit for the reception of prisoners for some time, the petitioners take the liberty of making this application to your Lordships.

Upon looking into the acts of federunt, it appears that their Lordships interposed in a similar application from the town of Brechin, in 1789. The deliverance there given by the Court was as follows:

" March 10. 1789.

"The Lords having resumed the consideration of this petition, they find, That in all imprisonments in the county of Forfar, the imprisonments are to be made as if there was no prison in the town of Brechin, from the date hereof until the term of Whitfunday 1790: Remit to the Sheriff of the county to give such directions as he shall judge expedient for disposing of the prisoners, now imprisoned in the jail of Brechin, they always being at the expence of the transportation, and likewise of all other expences in the maintenance of prisoners, or otherwise, to

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1793. which they would be subjected, if they had remained in the prison of the town of Brechin; and decern and ordain this petition, with the deliverance thereon, to be engrossed in the books of sederunt."

The petitioners would have applied to your Lordships before beginning the repairs, but the Court had risen for the spring vacation before they had come to a final resolution, and it was judged necessary to begin the reparations as early in the season as possible. It is presumed, that the whole will be finished in the course of nine months from this date, though perhaps a month or two longer may be necessary. There is at present only one prisoner, a woman of the name of Macnaughton, confined upon a charge of murder, and who at present is lodged in the lower part of the prison, which, though secure enough, is, from the operations carrying on in the other parts of the building, and on other accounts, very uncomfortable and inconvenient. It may be observed, that the two next jails to Dunfermline, in the county of Fife, are those of Inverkeithing and Bruntisland; and it is submitted, that it would be proper to authorise the removing this prisoner to that of Inverkeithing, which is the nearest, and only between three or four miles distant. Therefore, craving it might please their Lordships to take the premises under their consideration; and to find, that in all imprisonments in the county of Fife, the imprisonments are to be made as if there was no prison in the town of Dunfermline, until the term of Whitsunday 1794; remit to the Sheriff of Fife to give directions for removing the above-mentioned Macnaughton from the prison of Dunfermline to the jail of Inverkeithing, or to such other prison as he shall think best; or to give such other relief in the premises as to their Lordships should seem meet. According to Justice, &c. AD. ROLLAND.

15th May 1793.

The Lords having advised this petition, they find, That in all imprisonments in the county of Fife, the imprisonments are to be made as if there was no prison in the town of Dunfermline, until the term of Whitsunday 1794; and remit to the Sheriff of the county to give such directions as he shall judge expedient for disposing of the prisoners now imprisoned in the jail of Dunfermline, either to transmit them to the jail of Inverkeithing, or to such other prison as he shall think best, they being always at the expence of the transportation, and likewise of all other expences in the maintenance of prisoners, or otherwise, to which they would have been subjected if they had remained in the prison of the town of Dunfermline; and decern and ordain this petition, with the deliverance thereon, to be engrossed in the books of sederunt.

ILAY CAMPBELL, I. P. D.

29th June 1793.

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THE act of sederunt 11th March 1788, renewed till 1st July 1794.

Eodem die.

Sequestrations to be published in the Edinburgh Gazette.

THE Lords having taken into consideration, that by an act passed in the last session of Parliament, intituled, "Act for rendering the payment of creditors more equal and expeditious in that part of Great Britain called Scotland," it is, *inter alia*, enacted, That the Court, by the same deliverance which enacts sequestration of the estates of persons therein described, shall make an order upon the creditors to meet upon a certain day and hour, being not more than three weeks from that date, and as much sooner as circumstances may permit, to name an interim factor, if they shall think fit to appoint one; and failing their doing so, to devolve the interim care and custody of the effects upon the Sheriff-clerk; and that the Court shall by the same deliverance, make an order upon the creditors to meet upon a certain day and hour, being not more than six weeks, and not less than four weeks, from that date, for the purpose of naming a trustee, in whose person the said estate shall be vested, as therein mentioned; the said meetings to be at a convenient place, either where the bankrupt resides, or where his business is, or was last carried on, or as near it as possible, the place being also specified; which deliverance the petitioning creditor or creditors shall forthwith cause to be advertised, in a paper to be called *The Edinburgh Gazette*, to be printed and published by such person or persons as his Majesty, under his royal signature, or sign manual, shall, from time to time, think fit to appoint, on such day or days as the Court of Session shall, by an act of sederunt, direct and judge proper, for the more effectually carrying the said act into execution; otherwise the whole proceedings to be null and void: The said Lords, therefore, direct and appoint, that the said *Edinburgh Gazette* shall be printed and published twice in every week, to wit, Tuesday and Friday, to begin on Tuesday next, the 2d of July, and to continue to be published weekly on these days until the further orders of the Court: And that all sequestrations and meetings, in consequence thereof, shall be advertised in the said *Gazette*, otherwise the whole proceedings to be null and void, in terms of the said statute. And appoint this act to be printed, and published on the walls of the Inner and Outer House, in the usual manner, and entered in the books of sederunt.

1793.

5th July 1793.

Committee appointed for making Regulations as to the late Bankrupt-act, and other purposes.

THE Lords appointed the Lords President, Swinton, Henderland and Craig, whereof any two to be a quorum, and the Lord President to be convener, as a committee of their number, to consider of the proper regulations to be made by the Court, in consequence of the act passed in the last session of Parliament, for rendering the payment of creditors more equal and expeditious; and likewise to consider of such regulations as may be thought proper for rendering the judicial sales of bankrupt estates before the Court more expeditious, and less expensive; to regulate the admission of agents or solicitors before the Court; the dues payable in the Bill-Chamber; the manner of admitting litigants to the benefit of the poor's-roll; and such other matters as may occur for regulating and expediting the proceedings of the Court; and to meet with Committees to be named by the Dean and Faculty of Advocates, Keeper and Commissioners of the Signet, and the Preses of the Society of Agents or Solicitors, for the purpose above mentioned; and to report.

13th November 1793.

Act dispensing with executing Edictal Citations at the Church-doors, and recording the Executions; and authorising one Advertisement in the Edinburgh Gazette.

THE Lords of Council and Session having considered, That by the act of sederunt, 23d of Nov. 1711, intituled, "Act anent bankrupts, the ranking of their creditors, and sale of their estates;" an edictal citation is required of the bankrupt's creditors not in possession, and all others having interest, according to certain forms, which, by experience, have been found to be attended with unnecessary expence, delay and inconvenience: Do therefore appoint and ordain, That in time coming, it shall be sufficient to execute the said edictal citations at the market-cross of Edinburgh, and pier and shore of Leith, without also executing the same at the church-door of any parish, or recording the executions in any register.

And having also considered, That, in consequence of the rules laid down in an act of the Parliament of Scotland, passed in the year 1681, intituled, "Act concerning the sale of bankrupts' lands;" the practice has been to execute letters of publication of the act of roup, not only at the market-cross of Edinburgh, and pier and shore

shore of Leith, but at the church-doors of the parishes where the lands lie, and of the six adjacent parishes, and also to cite the creditors of new, in the manner therein mentioned, but which act is now in so far repealed by an act of the Parliament of Great Britain, passed in the last session, for rendering the payment of creditors more equal and expeditious in that part of Great Britain called Scotland: The said Lords, in virtue of the powers committed to them by the said last-mentioned act, do further appoint and ordain, That, in time coming, it shall be sufficient to execute the letters of publication at the market-cross of Edinburgh, and pier and shore of Leith, and to intimate the interlocutor of the Court, granting warrant for such letters, by one advertisement in the newspaper intituled *The Edinburgh Gazette*. And the Lords ordain this act of sederunt to be affixed on the walls of the Inner and Outer House, in the usual form, and to be entered in the Books of Sederunt.

1793.

ILAY CAMPBELL, I. P. D.

26th November 1793.

Act authorising the Principal Clerks of Session to sign the Abbreviates of Adjudication under the late Bankrupt-act.

THE Lords of Council and Session having considered, That by an act, passed in the last session of Parliament, for rendering the payment of creditors in Scotland more equal and expeditious, they are authorised to establish such regulations as shall appear to them most proper for carrying the same into effectual execution: And whereas, by the 24th section of the said act, it is appointed, that an abbreviate of the order of Court, adjudging the estate of the bankrupt to belong to the trustee chosen by his creditors, shall be recorded within fifteen days of the date thereof, in the register of abbreviates of adjudications: The said Lords do hereby order and appoint the said abbreviates, before being recorded, to be authenticated by the subscription of one of the Principal Clerks of Session, upon each page, and thereafter to be recorded in the same manner as the abbreviates of the ordinary decreets of adjudication, signed by the judge, pronouncer thereof. And the said Lords ordain this act to be entered in the Books of Sederunt, and affixed upon the walls of the Inner and Outer House, in the usual form.

ILAY CAMPBELL, I. P. D.

1793.

4th December 1793.

Petition of the Lord Clerk-Register, with regard to an Ancient Paper found in His Majesty's State Paper Office; and Procedure thereon.

Unto the Right Honourable the Lords of Council and Session, the Petition of Lord Frederic Campbell, Lord Clerk-Register for Scotland;

Sherweth,

THAT the petitioner having received information that there was in His Majesty's State Paper Office at London, an ancient manuscript, on vellum, apparently relative to Scots affairs, judged it incumbent on him, as Lord Clerk-Register for Scotland, to have the manuscript minutely examined, in order to discover whether the information was well-founded. That the manuscript having been accordingly so examined, appeared to your petitioner to be a record exclusively relating to Scotland; whereupon the petitioner thought it his duty to make application to His Majesty, humbly requesting, that he would be pleased to order the manuscript to be removed to his General Register-House at Edinburgh. That in consequence of this application, his Majesty was graciously pleased to give his authority, signified by letter from the Right Honourable Henry Dundas, one of His Majesty's Principal Secretaries of State, to the keeper of the State Paper Office, to deliver the said manuscript into the hands of the petitioner, the petitioner giving his receipt for the same. That, in obedience to this order, the said manuscript was delivered at the said office to the petitioner, who has brought it to Scotland, and is desirous, and ready to deposit it among the other public records in his Majesty's General Register-House; and he makes this application to your Lordships, to pray that you will interpose your authority to the proper manner of depositing the same.

May it therefore please your Lordships, to take the premises into your consideration, and to authorise the foresaid manuscript to be by your petitioner deposited, as a record, among the other records of Scotland, in his Majesty's General Register-House, in such manner as to your Lordships shall seem proper.

According to Justice, &c.

ARCH. CAMPBELL junior.

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1793.

4th December 1793.

The Lords having heard this petition, they remit the same to Lord Stonefield and Lord Swinton, to inspect the manuscript mentioned in this petition, to take evidence, if they think necessary, with regard to the authenticity thereof, and to report; and, at the same time, to report upon the authenticity of the volumes remitted to Lord Hailes and Lord Swinton upon the 2d December 1785, and that *quamprimum*.

ILAY CAMPBELL, I. P. D.

19th December 1793.

In pursuance of the remit of the 4th current, on the petition of Lord Frederick Campbell, Lord Clerk-Register for Scotland, the Lords Stonefield and Swinton having inspected the manuscript mentioned in that petition, received information from Lord Clerk-Register, and his depute, William Robertson, in regard to it, and compared the same with other writings in the Register-Office nearly of the same age; we are satisfied, that the book is an authentic record of writings, public and private, relating to Scotland; and therefore we give it as our opinion, that authority should be given to Lord Clerk-Register to deposit the manuscript among the records already under his charge.

With regard to the thirty volumes which were in the custody of the late Mr Roderic Macleod, writer to the Signet, we find, that, in consequence of the remit to Lord Hailes and Lord Swinton, of 2d December 1785, these were transmitted by Mr William Macleod-Bannatyne to his Majesty's General Register-house, and have remained there ever since, under the charge of the deputies of the Lord Clerk-Register; but, as it will take more time to examine them than we can spare at this time of the session, we have directed these deputies to make an inventory, with such observations and explanations as have occurred, tending to prove the authenticity of these books, and to furnish us with copies thereof; after which we will resume the consideration of this part of the business, and report our opinion upon it.

JOHN CAMPBELL.
JOHN SWINTON.

The Lords having resumed consideration of this petition, with the report made by Lord Stonefield and Lord Swinton, they approve of the report, appoint the manuscript volume mentioned in the petition, to be lodged among the other records in the custody of the Lord Clerk-Register and his deputies; and request the Lord President, in name of this Court, to return thanks to the Right Honourable Lord Frederick Campbell, Lord Clerk-Register of Scotland, for the trouble which his Lordship has taken in recovering to the public so valuable a book of the ancient records of this country. They further take this opportunity of expressing the high sense entertained by the Court of the benefit the public has derived from his Lordship's

1794. Lordship's unremitting assiduity and eminent services in the execution of his office as Lord Clerk-Register; and particularly in the great attention which he has bestowed upon the construction, fitting up, and completing of the new repository for the public records, as well as the internal arrangement of the business there; and, last of all, in having solicited and obtained, by the favour of his Majesty, a permanent establishment for the preservation of the building, and for defraying the necessary expence attending the security and safe custody of the records. And appoint the report, with this commission, to be inserted in the Books of Sederunt.

ILAY CAMPBELL, *I. P. D.*

13th February 1794.

Committee named to consider and report Regulations as to transmitting Processes to the Bill-Chamber from Inferior Courts.

A PETITION and representation having been presented to the Lords by John Bushby, Sheriff-clerk of Dumfries, against an interlocutor, pronounced by the Lord Ordinary on the Bills, upon a bill of advocation, presented by Christopher Smith, writer and messenger in Dumfries, against Hugh Maxwell, writer in Dumfries, ordaining the Sheriff-clerk of Dumfries to transmit the process to the Bill-Chamber, within six days after intimation of the said order, the Lords, upon advising the said representation, with answers, and a report by the Clerks to the Bills, recalled the said order; and, at the same time, resolved to appoint a committee of their number, to consider of proper regulations to be followed in the Bill-Chamber, in time coming, with regard to transmitting of processes, extracts, or certified copies thereof, with such bills of advocation, hereafter: And accordingly nominate the Lords Justice-Clerk, Elkgrove, Swinton, Henderland and Abercromby, as a quorum of their number, for the above purpose, any two to be a quorum, and Lord Justice-Clerk convener; and to report *quamprimum*.

February 26. 1794.

Act for the more speedy and effectual levying of Fines and Amends.

THE Lords of Council and Session, taking into their consideration, That the fines and amends imposed for enforcing the due observance of the rules and orders of Court, and for other just causes, are frequently evaded or not levied; and that the 10th article of the act of sederunt of the 11th of August 1787, respecting fines imposed in the Outer-House, has proved ineffectual: Therefore they do hereby repeal the same, and they do, in place thereof, enact and ordain:

1790,

1^{mo}, That all fines imposed, and amands incurred, in proceedings before the Lords in the Inner-House, shall be entered by one of the six Principal Clerks of Session, in a book kept by them for that purpose, immediately on any such fine being imposed, or amand incurred; and the payments thereof, when received by the said Clerks, shall, in like manner, be marked in the said book, which shall be patent to the Collector of the Poors' Funds, for the time being, on every Monday in the time of session, in order to his taking such lists or notes therefrom as he may think fit; and that he may be enabled to recover such fines and amands as are due and unpaid, and to use the means for that purpose hereafter mentioned: And that in the penult week of each winter session, the said Principal Clerks shall pay over to the said collector, all fines and amands that have been received by them during the preceding year, and have not been already applied by order of the Lords; and the same shall then be made a part of the annual distribution among the poor.

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2^{do}, That each of the six deputy-clerks of session, officiating in the Outer-House, and the clerks of the bills, shall keep a book, in which they shall enter all fines and amands imposed by any of the Lords Ordinary; which book, bearing the proper entry wrote therein, shall, within twenty-four hours after any fine has been imposed, be by them presented to the said Lord Ordinary for his signature thereto; and the said entries shall mention the cause of imposing the fine, and the name of the person who is liable in the same: But which fines shall not be leviable until the lapse of fourteen days after the dates of their entries in said book, respectively; during which time, and not afterwards, it shall be competent for the Lords Ordinary, on sufficient cause shown, to remit any such fines, by a note wrote on the of the entry thereof in the said book, and signed by the said Lord Ordinary, mentioning that such fine is remitted.

3^{tiò}, That when it shall be declared by an interlocutor of any Lord Ordinary, that in case any particular paper or writing shall not be produced or given in to the clerk to the process within a limited time, a certain amand shall be incurred; it shall be the duty of the said clerk, or of the clerk of the bills, when such order is made in the Bill-Chamber, forthwith to make an entry thereof in the books above mentioned, to be kept by such clerk; and the six depute-clerks of session, and the clerks of bills, respectively, and all persons acting under any of them, are hereby strictly prohibited and discharged, after expiry of the limited time, from receiving the paper or writing so ordered, without at the same time receiving the amand incurred, unless the Lord Ordinary shall have, upon cause shown to his satisfaction, allowed such paper or writing to be received without payment of the amand, by a note to that effect, written in the said book, and signed by him; and when any of the said clerks shall receive payment of any fine or amand, he shall immediately mark the payment in the said book as made to him.

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1794. 410, That it shall likewise be the duty of the said six deputy-clerks of session, upon every Monday in the time of session, and of the clerks of the bills, on the last Monday of every month throughout the year, to present to the said collector of the poors' funds, their said books, containing the foresaid entries, for his information, and then also to pay over to him the whole fines and amands received by them since the preceding exhibition to him of the said books.

510, That the said collector of the Poors' Funds shall keep a book, in which he shall regularly enter, of their respective dates, the payments of all fines and amands received by him from any of the clerks above mentioned, or recovered by himself from the persons liable in such fines or amands; and shall likewise enter therein, from time to time, lists of all fines imposed, and amands incurred, and not remitted, payment whereof has not been then received, as appearing from the several books of the clerks; and immediately thereafter, he shall apply to the Lord Ordinary officiating on the bills, for captions or warrants, directed to the macers of Court, for recovering the same, by imprisoning the persons respectively liable therein, until payment: Which warrants the said Lord Ordinary is hereby authorised and required to grant, upon production to him of a certificate under the said collector's hand, bearing, That such fines or amands are due by the persons therein mentioned; and which warrants the collector shall forthwith cause to be put in execution: And, on the penult week of each winter session, the said collector shall lay a complete state of his accounts for the preceding year, together with his said book, before the Lord Ordinary on the bills, for his inspection, and to the end that the amount of the sums in the collector's hands may be ascertained, and divided among the poor in the usual manner.

ILAY CAMPBELL, I. P. D.

24th May 1794.

Sentence of Banishment against Ninian Scot for Vitiating a Bill.

IN the conjoined processes, Ninian Scot of Carcoside, against Christian Pate and others; and she and others against the said Ninian Scot; the Lords of Council and Session having resumed consideration of this cause, procedure held therein, and writings produced, particularly the bill, dated Greenbank, 23d May 1786, drawn by Ninian Scot, upon and accepted by Thomas Pate, with the judgment of the Court, finding, that the said bill was vitiated, the word *two* having been changed into *five*. Against which judgment the said Ninian Scot entered an appeal to the House of Peers; but which, upon his own petition, and payment of ten guineas as costs, he was, upon the 6th day of March last, allowed to withdraw; and having also considered the attestation of Mr Benjamin Bell and Mr Harkness,

Harkness, surgeons, with regard to the said Ninian Scot's state of health, they find the said Ninian Scot guilty, actor, art or part, of vitiating the aforesaid bill, and of using the same in judgment, knowing it to be vitiated: Therefore, the Lords ordain the said Ninian Scot to be carried from the bar and incarcerated in the tolbooth of Canongate, therein to be detained till the 4th day of June next, and then to be set at liberty: Moreover, the said Lords of Council and Session banish the said Ninian Scot from Scotland for the full period of seven years, to be computed from the 4th day of July next; with certification to the said Ninian Scot, that if he shall return to, or be found in, Scotland at any time within the said period, he shall be apprehended, and transmittted from Sheriff to Sheriff until he be lodged in the tolbooth of Edinburgh, and shall then be transported beyond seas for the term of seven years, to such place as his Majesty, with advice of his Privy Council, shall appoint; and grant warrant for all proper officers of the law for carrying this sentence into execution; and ordain the same to be recorded in the Books of Sederunt.

ILAY CAMPBELL, I. P. D.

27th June 1794.

THE Act of Sederunt 11th March 1788 renewed till 1st July 1795.

11th July 1794.

Act concerning Judicial Sales and Rankings at the instance of Creditors.

THE Lords of Council and Session, considering that the forms observed in processes of judicial sale, and rankings at the instance of creditors, require to be further amended and regulated in certain particulars, do therefore, in exercise of the powers committed to them by various statutes, and particularly by an act passed in the last session of Parliament, intituled "An act for rendering the Payment of Creditors more equal and expeditious in that part of Great Britain called Scotland," appoint and ordain as follows:

1^{mo}, That whereas, by the act of sederunt 17th January 1756, for regulating the sale of bankrupt estates, Art. 1. and 12., and by the act of sederunt 9th August 1783, certain notices are appointed to be given by publication in the Edinburgh Evening Courant and Caledonian Mercury, the said notices shall in time coming be given by advertisement in the newspaper called the Edinburgh Gazette, in place of the other two newspapers before mentioned.

2^{do}, That whereas the said act of sederunt, 17th January 1756, § 2., authorises a meeting of the creditors to be appointed by the Lord Ordinary for choosing a common agent, and prescribes a certain mode of proceeding: And whereas such elections have too frequently

1794. frequently been attended with disputes and litigation, which ought as far as possible to be avoided: The Lord Ordinary shall, in time coming, appoint intimation of the time and place of such meeting, for the choice of a common agent, to be made in the minute-book, and by one advertisement in the Edinburgh Gazette, at least fourteen days previous to the day of meeting; and the person officiating as clerk to the meeting, shall report the person as duly chosen common agent, who is voted for by a majority of creditors in value, exclusive of penalties and bygone or current interests, (unless in so far as bygone interest shall have been accumulated by a decree of adjudication); and in computing the amount of such debts as consist of annuities or liferents, they shall be estimated at ten years' purchase of the annuity or liferent; providing always, that no creditor shall be allowed to vote by himself, or by his agent or attorney, unless his ground of debt, with an oath of verity upon the same, by the creditor himself, if in Britain, or an oath of credulity by the agent or attorney, if his constituent happens to be out of Britain, shall have been lodged in the hands of the clerk to the process, at least twenty-four hours previous to the time of meeting.

3^{to}, That no person shall be capable of being elected as common agent, who is himself one of the creditors, or who, with respect to the common debtor, is a conjunct or confident person; and the common agent, when chosen, shall take an oath *de fidei*, before the Lord Ordinary, at the first calling after his election is confirmed; and the person so named shall not, after his appointment as common agent, be entitled, either by himself, or in the name of a clerk or confidential person, to act as the private agent of any particular creditor, or class of creditors, or of the common debtor, in any matter relative to the ranking, or to the division of the price, while the same are in dependence before the Court, otherwise he shall become, *ipso facto*, disqualified from acting as common agent.

4^{to}, That in case the election of the common agent shall happen to be disputed, no representation shall be competent against the interlocutor of the Lord Ordinary, determining upon the merits thereof, and only one reclaiming petition shall be allowed; the person approved of by the Lord Ordinary being in the mean time entitled to act, and the person whose election shall ultimately be declared, being entitled to recover from his competitor full expences, no part of which shall be chargeable against the common fund.

5^{to}, That the common agent shall keep a minute-book of his proceedings, and of his official correspondence, open to the inspection of all concerned; and in respect that he derives his authority from the Court, he shall at all times be amenable to answer for his conduct, by summary application to the Court at the instance of any party interested, the Court being entitled, upon cause shown, either to remove him from the office of common agent, and to appoint a meeting of the creditors to choose another, or to give such other redress as the circumstances of the case may require.

6^{to}, That the common agent, after his nomination is confirmed by the Lord Ordinary, shall take the most effectual steps for ascertaining the nature and extent of the subjects belonging to the common

mon debtor, together with the incumbrances affecting them; in order to which, he shall, if necessary, cause search the public registers, and apply to the Lord Ordinary for letters of first and second diligence against havers. 1794.

7^{mo}, That immediately after the last term for producing the interests of the creditors is elapsed, the common agent shall make up a full state thereof, and of the objections thereto, and the questions arising thereon, distinguishing those objections or questions which go to the enlargement of the common fund, or to prevent its diminution, from those which only affect the interest of particular creditors, or classes of creditors, in competition with one another, and also suggesting the order of ranking; which state shall be printed, and copies of it put into the Lords' boxes, and distributed among the creditors, or their known agents; and in case thereafter any new interest shall be produced, or any new objections or questions arise, a supplementary state, or states, shall be made up and communicated by the common agent in the same manner, pointing out the variations thereby occasioned: He shall also, in these states, set forth whether there is any probability of a reversion to the common debtor, and in what view, or different views, there may be a prospect of such reversion.

8^{vo}, That it shall not be lawful for the common agent to discuss, at the expence of the estate, any questions in the ranking which relate only to the interest of particular creditors, or classes of creditors, in competition with one another, and which do not affect the common fund; excepting only, that he shall lay the whole state of the ranking before the Lord Ordinary, as directed by the act of sederunt 17th January 1756, and by this present act, in order that his Lordship may give judgment thereon, or take the same to report; but it shall then be left to the individual parties interested and their agents, to follow out those questions which are of the description already mentioned; the common agent being at the same time entitled, as he is hereby particularly authorised and enjoined, to take all necessary measures for obliging those who have the conduct of such questions to proceed in them without delay.

9^{no}, That in case there shall appear to be a clear reversion for the postponed creditors, or for the common debtor, after discussing preferable claims, it shall be lawful for those interested in such reversion, if they are agreed among themselves as to the distribution or disposal of it, to put a stop to further litigation, by an application to the whole Court, and obtaining an order to that effect, the said application being intimated to the common agent, or any other person or party engaged in the said unnecessary litigation.

10^{mo}, That so soon as the Lord Ordinary has pronounced his interlocutor on the said state, or given a deliverance, taking the same or any part thereof to report, the said interlocutor or deliverance shall be intimated in the minute-book, that the different creditors or their agents may attend to their interest in the future progress of the business, and appear by their own counsel, if they shall think fit so to do.

11^{mo}, That whereas, in discussing objections, it is ordered by articles 9. and 10. of the said act of sederunt, 17th January 1756, that

1794. besides advising objections, answers, and replies, the Lord Ordinary shall appoint a hearing at the bar; and whereas, for the most part, either the one or the other of these is sufficient, it shall be competent to the Lord Ordinary, in time coming, upon advising the objections and answers, to order such further pleadings, either in writing or *viva voce*, as he shall think the case requires, the same being always limited to a short time, under a penalty, and only once allowed, without any liberty of representing.

12^{mo}, That in case, at any time hereafter, a creditor shall, upon cause shown, be reponed against a decree of certification in a ranking and sale, he shall be obliged to pay the whole expence occasioned by the delay, and by the production of a new interest, as the same shall be ascertained by the Court, or by the Lord Ordinary; and the clerks are hereby prohibited from taking in any interest or claim, either before or after the decret of certification is extracted, without an oath of verity, if the creditor is resident in Great Britain, or an oath of credulity by the factor or agent for creditors residing or happening to be elsewhere.

13^{tio}, That whereas it has been usual for the preferable creditors to apply for interim warrants upon the factor for payment of sums due to them; and sometimes by such interim warrants, preferable creditors get the whole or most part of the sums due to them, before the order of ranking is finally settled, which practice has by experience been found to be attended with inconvenience; no creditor, however preferable, shall, in time coming, be entitled to draw by interim warrants any sum out of the common funds, without sufficient cause shown to the Court, and in no case shall draw full payment, and no interim warrant shall be granted before decret of certification is extracted, except for interest or annuities.

14^{to}, That in order to prevent as far as possible any undue delays in carrying on judicial sales and rankings, the creditors or their agents, at the meeting for election of a common agent, shall name a committee of three of their number, (if they think fit so to do,) whose duty it shall be, if the proceedings are not finally closed within two years after commencement of them, to inquire into the reasons thereof; and the common agent shall, at any rate, with or without the concurrence of such a committee, print and give in to the Court, and distribute among the other agents concerned, a short minute, stating the then situation of the process, and what have been the causes of the delay; and a similar minute shall be given in at the end of every year thereafter till the proceedings are closed, unless dispensed with by the Court.

15^{to}, That whereas the said act of Parliament lately passed authorises the Court to make regulations for lessening the number of adjudications, pending a judicial sale, and facilitating the *pari passu* preference of creditors: And whereas, in the case of judicial sale at the instance of apparent heirs, it has been found that the decree of sale has the effect of an adjudication for behoof of the whole creditors: It shall be in like manner a rule in time coming, that in processes of sale and ranking at the instance of creditors, the decree of sale shall have the same effect, and shall operate as a common decree

cree of adjudication in favour of all the creditors who shall be included in the decree of ranking and division; and it shall not be necessary in time coming for any of the creditors ranking as aforesaid, to lead separate adjudications against the estate, in order to entitle them to receive payment; neither shall such adjudications be necessary for the security of the purchaser; the decrees of sale, ranking, and division, being in effect an adjudication of the estate for all the debts therein contained. And appoint this act to be recorded in the Books of Sederunt of the Court, and printed and published in the usual manner.

1795.

ILAY CAMPBELL, *I. P. D.*

11th March 1795.

Report on Manuscripts lodged by Mr William Macleod-Bannatyne, Advocate.

THE Lords Stonefield and Swinton, in obedience to the remit from the Lords, dated 4th December 1793, having inspected the twenty-nine manuscript books mentioned in the said remit, which were lodged there by William Macleod-Bannatyne, Esq; advocate, on the 2d December 1785, report as follows:

1st, That those manuscript books, (all of which relate to the thirds of benefices,) are of two sorts, viz. 1. Books of Modification and Affignation, which specify the stipends modified, assigned and paid, to the different superintendents, commissioners, ministers and readers, throughout the kingdom; these are twenty-two in number; And, 2^{dly}, Books intituled, "Of Affignation and Superplus," which exhibit a regular account of the receipt and expenditure of the thirds, from which the superplus results, and which are seven in number, as will appears from the following statement.

The 1 st is the book for the year 1576,	The 11 th is the book for the year 1591,
2 ^d , - for the year 1578,	12 th , - for the year 1592,
3 ^d , - for the year 1579,	13 th , - for the year 1594,
4 th , - for the year 1580,	14 th , - for the year 1595,
5 th , - for the year 1585,	15 th , - for the year 1596,
6 th , - for the year 1586,	16 th , - for the year 1597,
7 th , - for the year 1588,	17 th , - for the year 1599,
8 th , - for the year 1589,	18 th , - for the year 1601,
9 th , - for the year 1590,	19 th , - for the year 1607,
10 th , Another ditto for the	20 th , - for the year 1608,
year - - 1590,	21 st , - for the year 1614,
appearing to be a duplicate	22 ^d , - for the year 1615.
thereof.	

The Books of Affignation and Superplus.

The 1 st is the book for the year 1594,	The 4 th is the book for the year 1605,
2 ^d , is - for the year 1603,	5 th , is - for the year 1606,
3 ^d , is - for same year, 1603,	6 th , is - for the year 1608,
appearing to be a duplicate	7 th , is - for the year 1609.
of the preceding.	

2^{dly},

1795.

2dly, That besides the tenor and contents of the two-and-twenty volumes first mentioned, and the character in which they are written, which afford the strongest presumption of their being originals, and genuine books of public record, the Lord Register's deputes for keeping the records informed us, that there had been from time immemorial, among the public records, some books containing the accounts of various "Collectors General of the Thirds of Benefices;" and, particularly, for the following among other years, viz. for the year 1576, 1578, 1579, 1580, 1585, 1586, 1589, 1590 and 1595; and that for the same years, there are among the volumes received from Mr Macleod-Bannatyne, Books of Modification and Assignment: That by comparing some of these Books of the Collectors General, which were laid before us by the said keepers of the records, with the Books of Modification and Assignment for the same years, received from Mr Macleod, the latter are evidently vouchers of the former. As, for example, introductory to the statement of the discharge of money in the Books of the Collectors General, there is written as follows, viz. "Of the quhilk haill sowme before chargit, the comptare aught to be defeased of the sowmes after specifiet, given and disponit be our Soverane Lord, with advise of the Commissionaris for the kirk-depute with Lordis of Counfall to accord thairupoun, and be thair common agreement assignit to the superintendentes, commissioners, ministers and readairs, within the bounds of the diocesis after mentioned, extending ilk diocesis to the sowmes particularlie after specifiet in the Book of Modification and Assignment of thair stipendis, divyding the saidis diocesis severallie be thameselfis, and evrie diocesis containand the particulare names of the said superintendentes, commissioners, ministeris and reidaris, with the particulare modification and assignment of thair stipendis for the zeir complit, beginnand and makand ane haill zeir, schawing and producit before the Lords Auditouris of the Checker, and conferrit and calculat be thame, and fundin to extend to in evrie diocesis to the sowmes particularlie following at mair length, proportis; that is to say." Then the same Collector General's Book proceeds to state the discharge thus, viz. "To the commissionaris, ministeris and reidaris, within the diocesis of Caithness, according to the modification and assignment of the said buik, the zeir complit, 1^m. 1^c. xvii^l. 2p^r. d."

After which similar articles follow for the diocesis of Murray, the diocesis of Aberdeen, &c. &c.; and on comparing the total sum thus generally stated in the Collector General's accounts for each diocesis, with the total amount of the particular assignments for the same diocesis, specified in the Books of Modification and Assignment received from Mr Macleod, we find them to agree.

In fact, therefore, the said Books of Modification and Assignment appear to be vouchers of the Accounts of the Collector's General for the corresponding years, and must have the same authenticity with them.

3dly, As to the other twelve Books of Modification and Assignment received from Mr Macleod, viz. those for the years 1588, 1591,

1591, 1593, 1594, 1596, 1597, 1599, 1601, 1607, 1608, 1614 and 1615: although there be in the general register-house no books of the Collector General's corresponding with these twelve of Mr Macleod's, yet the perfect similitude of these twelve books, in every particular, to those other Books of Modification and Affignation, whereof the authenticity is established by the corresponding books of the Collectors General above mentioned, puts the authenticity of the said books also beyond dispute. The same is further confirmed by this circumstance, that they repeat the same incumbents and stipends the others contain, except where variations may have been occasioned by deaths and translations of the former incumbents, and by some minute alterations in the stipends, that may have been made by annexation, disjunction, and new erections.

4th, and lastly, As to the second sort, viz. the seven Books of Affignation and Superplus for the years 1594, 1603, 1605, 1606, 1608, 1609, they relate to the same subject of thirds of benefices, as has been already said, are unattended with any circumstance of suspicion, and bear the like internal appearance of authenticity with the others; we therefore think they too ought to be regarded as public records.

6th March 1795.

JO. CAMPBELL.

JO. SWINTON.

Petition Lord Clerk-Register for having certain Records deposited in his Office, and Procedure thereon.

Unto the Right Honourable, the Lords of Council and Session,

The Petition of Lord Frederick Campbell, Lord Clerk-Register for Scotland;

Sheweth,

THAT the secretary's register of feifins was introduced, by an act of convention, of this date.

July 31. 1599.

On the 3d of November, the same year, a supplication was presented to the Court of Session, by Elphinston of Barntown, the secretary, beseeching, "That be ane special act, your Lordships will authorise, appreive and interpone your authority, and consent to the act foresaid, and gif command that the samyn be registrate in your buiks of federunt, and publicatioun to be maide thair of, in the utter tolbuith, and otheris places neidful, qwhair-through nane pretend ignorance of the samen," &c. The Lords accordingly "authorise, appreive and allow the foresaid act, in all and sundry the points and heids thaireof, and interpone thair authority thairto, and gifs command, that the samyn be registrat," &c.

Nov. 3. —

That, after this supplication, and the act of federunt following on it, it was judged necessary to give the institution a regular parliamentary sanction, which was done by a public statute.

Nov. 15. 1600.

I

That

1795. That the secretary's register was, by another act of convention, abolished, from and after this date; and this act of convention was ratified by an act of Parliament.
- Jan. 27. 1609.
- June 24. — That the register of seifins was at last established on its present footing, by act of Parliament, 28th June 1617.
- Oct. 29. 1794. That, on this date, there were, in the General Register-House, Books of the Secretary's Register, for the following shires :

Aberdeen,
Ayr,
Banff,

Kincardine,
and
Linlithgow ;

all apparently complete.

P E R T H :

From the 3d August 1601, to its abolition. The two, or perhaps three, first books being awanting.

F I F E A N D K I N R O S S :

In one district, from 20th January 1603, to its abolition. The three first volumes are lost; that beginning 20th January 1603 being entitled, *The 4th Book of the Secretary's Register*.

For the Shires of

1. Caithness,
2. Sutherland,
3. Ross,

4. Cromarty,
and
5. Inverness,

which are all comprehended in one district, there is only a single book, beginning the 3d February 1606, and ending 3d May 1608.

That, on the said 29th of October 1790, there were, in the General Register-House, no books of the secretary's register for the following shires :

Edinburgh,
Haddington,
Berwick,
Roxburgh,
Selkirk,
Peebles,
Dumfries,

Kirkcudbright,
Wigton,
Renfrew,
Argyle,
Bute,
Dunbarton,
Lanark,

Stirling,
Clackmannan,
Forfar,
Elgin and Forres,
and
Orkney.

That, on Thursday the 30th October 1794, Mr Hill, bookseller in Edinburgh, delivered into the General Register-House, the 1st, 2d, 3d, 5th, 7th, 8th, 9th and 10th books of the secretary's register, for the districts of Edinburgh and Haddington.

Book

Book 1st begins 7th December 1599.
Ends 24th August 1601.
The 2d begins 16th April 1602.
Ends 29th August 1603.
The 3d begins 29th June 1603.
Ends 6th March 1604.
The 4th is wanting.
The 5th begins 28th July 1604.
Breaks off at 15th June
1605,—the eleven con-
cluding leaves being torn
out.

The 6th is wanting.
Book 7th begins 10th April 1606.
Ends 26th Decem. 1606.
Book 8th begins 28th Dec. 1606.
Ends 10th July 1607.
Book 9th begins 12th July 1607.
Ends 31st March 1608.
The 10th begins 1st April 1608.
Ends 20th January 1609;
But the 235th., and fif-
teen following leaves are
torn out.

1795.

That there appears no books between the 24th August 1601, when book 1st ends, and the 16th April 1602, when book 2d begins.

That the petitioner thinks it his duty to lay these facts before your Lordships, that you may consider them, and give him directions as to the disposal of these books, which have so come to his office.

May it therefore please your Lordships, to consider the premises, and to authorise the petitioner to deposit the foresaid books among the records, under his charge; or to give the petitioner such other directions thereanent, as to your Lordships shall seem meet.—According to Justice, &c.

ARCH. CAMPBELL *junior*.

The Lords (4th December 1794) having heard this petition, they remit the same to Lord Eskgrove and Lord Swinton, as a Committee of their number, to inspect the volumes mentioned in this petition, and to report their opinion as to their authenticity; and to take any evidence relative thereto, which they shall judge expedient or necessary.

ILAY CAMPBELL, *I. P. D.*

The Lords Eskgrove and Swinton, in pursuance of the remit made to them by the Lords on the petition of Lord Frederick Campbell, Lord Clerk-Register, of date 4th December 1794, have carefully inspected the eight manuscript books lately recovered and mentioned in the said petition; and have also inspected sundry other manuscript volumes, which are and have been kept in the General Register-House from time immemorial, and have been held and used as authentic original books of the record, called the Secretary's Register; and have compared therewith the said eight volumes already mentioned; and they do report thereupon as follows:

1mo, That the said eight books are of the same size and binding, filled up, subscribed and docketed in the same manner, and containing similar copies of the same kind of deeds and instruments, as the authentic volumes of the secretary's register for other shires and

1795.

and districts, lying in the Register-House, and bear every external mark and appearance of being likewise genuine original records of seifins, &c. for the sherriffdom of Edinburgh, and constabulary of Haddington, kept under the direction of the secretary of Scotland at the periods of their dates.

2dò, That the first or earliest of the said eight books or volumes, begins 7th December 1599, and ends 24th August 1601. On the first page of it, these words are written: "The first register of the secretarie of the sherriffdom of Edinburgh principal, and within the constabulary of Haddington. (Signed) A. Laute." Every leaf of the book is subscribed at the bottom G. Billye, and at the end of the last leaf there is written as follows: "This buik contenis three hundred leaffis; ilk leaf yairof markit be me Gilbert Billie, secretar-deput, togidder with my sing at ilk XXV leif yairof, as use is in the lyke. Subscrivit with my hand at Edinburgh, ye XX of November 1599 zeris. (Signed) G. BILLYE."

The second book begins 16th April 1602, and ends 29th June 1603. At the beginning of it is written, "The second register of the secretarie of the sherriffdome of Edinburgh, principal, and within the constabulary of Haddington. (Signed) A. Laute." Every tenth leaf is subscribed "P. Sterling;" and from the 22d leaf to the end of the book, every instrument recorded is also subscribed at the end "A. Laute." And where in that part of the book an instrument happens to end at a tenth leaf, both the subscriptions A. Laute, and P. Sterling appear on the same leaf or page, as on the 230th, 240th and 360th leaves; and on the last page the signature A. Laute stands at the end of the record, and immediately under it is written a doquet subscribed P. Sterling, in these words: "This buik contenis three hundrethe fourscoir seventeen leaffis; ilk tent leaf thairof markit be me Patrick Sterling, servitour to my Lord Secretar, at the said Lordis command. Subscrivit with my hand at Edinburgh, the secund of Febrwary 1603. (Signed) P. STERLING."

The third book begins 29th June 1603, and ends 6th March 1604. At its beginning there is written, "The thrid register of the secretarie of the sherriffdom of Edinburgh, principal, and within the constabulary of Haddington. (Signed) A. Laute." Every leaf of it is subscribed A. Laute. And on the end of its last leaf these words are written: "This book contenis three hundreth fourscoir and ten leiffis; ilk leif thairof markit be me Adam Laute, writer-depute, and keeper of the register of the secretary of the sherriffdoms of Edinburgh principal, and Edinburgh within the constabulary of Haddington, according to the commission gevyn to me thairanent. (Signed) A. LAUTE."

The fourth book of this register is still wanting. But the next book of those newly recovered begins 28th July 1604, and ends 15th June 1605. The 367th, and all the following leaves of this volume, apparently ten in number, have been torn out; and consequently

quently the doquet written on the last leaf of all the other volumes, does not appear upon this one. But it bears the usual doquet or title at the beginning of it, in these words: "The fifth register of the secretarie of the sheriffdome of Edinburgh principal, and within the constabulary of Haddington. (Signed) A. Laute." And every leaf of the book still extant, bears the same signature, A. Laute. 1795.

The sixth book of the register is likewise still wanting; but the next volume recovered begins 10th April 1606, and ends 26th December 1606. It bears doquets both at the beginning and end of it, precisely similar to the doquets upon the volume titled the fifth book of this register above inserted; and both these two doquets, and every leaf of the book bear the same signature, A. Laute. The first doquet or title of it bears it to be "The seventh register of the secretarie," &c.

The next volume, which is intituled, "The aucht register of the secretarie," begins 28th December 1606, and ends 10th July 1607.

The subsequent one is intituled, "The nynth register of the secretarie," &c. It begins 12th July 1607, and ends 31st March 1608.

And the last of the said books, intituled, "The tenth register of the secretarie," &c. begins at 1st April 1608, and ends 20th January 1609. But the 225th, and twenty-five following leaves, have been torn out.

These three last-mentioned books likewise bear doquets at beginning and end, in the same terms with those upon the volume intituled "The fyft book," above recited; and both the two doquets on each of these volumes, and every leaf of the books, also bear the same subscription, viz. A. Laute.

And 3dly, In addition to the evidence of the authenticity of the said eight books or volumes of the secretary's register newly recovered, arising from the doquets and subscriptions which they bear, and their correspondence in form, appearance, and contents, with the books of that register for other shires, already in the General Register-House, it is to be noticed, that, from an examination of these last-mentioned books, it appeared that sundry volumes of them are marked in the like manner, by the subscriptions of G. Bilye and P. Sterling, by whom the first and second books of the register for the shire of Edinburgh newly recovered are marked; and upon comparison of the handwriting of the doquets, and the signatures of those names upon both of those registers, they appear evidently to be the handwriting and subscriptions of the same persons upon both, viz. of Gilbert Bilye and Patrick Sterling respectively, and those persons have likewise the same designation given them in the doquets of both those sets of registers.

More particularly, Gilbert Bilye, who marks the first book of the secretary's register for the shire of Edinburgh, beginning in December 1599, and ending in August 1601, marks and subscribes in like manner the first book of the secretary's register from Aberdeenshire, beginning 21st December 1599, and ending 31st May

1795. 1602; and also the first book of the said register for the shire of Ayr; the first book for the shire of Banff; the first book for the shire of Kincardine; and the first book for the shire of Linlithgow; all within the same period, from 1509 to 1602. So likewise Patrick Sterling, who is a marker or subscriber of the said book of this register of the shire of Edinburgh, from 16th April 1602 to 29th June 1603, is the marker of the third book of the secretary's register for Aberdeenshire, from July to December 1604; of both the second and third books for Ayrshire, from July 1602 to May 1607; of the second book for Banffshire, from March 1603 to February 1605; of the second book for Kincardineshire, from April 1604 to April 1607; and of the only book for the shire of Inverness, comprehending the shires of Ross and Cromarty, Sutherland and Caithness, from February 1606 to May 1608.

The writing or subscription of Adam Laute, by whom the last six newly recovered books of the register for Edinburghshire are marked, does not indeed appear upon any of the books of the secretary's register for other shires, preserved in the Public Register House, in the same manner as the writing and subscriptions of Gilbert Billye and Patrick Sterling; but, as Adam Laute subscribes the doquets at the beginning of the first and the second books of the Edinburgh register, and Gilbert Billye marks or signs every leaf of the said first book, and writes and signs the doquet at the end of it, and Patrick Sterling marks or signs every tenth leaf of the said second book, and repeatedly signs at the same page of it where Laute's subscription likewise appears, and writes and subscribes the doquet on the last page thereof, immediately under the signature of A. Laute, it is evident that Adam Laute, Gilbert Billye, and Patrick Sterling's handwriting and signatures corroborate each other, and prove that all the three were at the same time officers acting under the secretary's authority, in the marking and keeping different branches of this register. From thence it follows, that all the said eight volumes, being regularly attested by one or more of these three persons, must be thereby sufficiently authenticated.

Upon the grounds above stated, the Lords reporters are of opinion, that the said eight books mentioned in the Lord Register's petition, are all and each of them genuine original records, and parts of what was called the Secretarie's Register, upon the authenticity of which the lieges may and ought to rely; and, therefore, that the Lords, if it pleases them, should authorise the Lord Clerk-Register and his deputies, to receive and keep the said eight books in the General Register House, as part of the said register, and to give out extracts therefrom to all who may require the same accordingly.

DAV. RAE.

10th March 1795.

JOHN SWINTON.

11th March 1795.

The Lords having resumed consideration of the said petition, with the report of Lord Eskgrove and Lord Swinton, as to the authenticity of the volumes mentioned in the petition, the Lords approve of the

the report, and authorise the Lord Clerk-Register and his deputes, to receive and keep the said books in the General Register-House, and to give out extracts therefrom to all who may require the same; and appoint this petition, and deliverances thereon, with the foregoing report, to be recorded in the Books of Sederunt.

ILAY CAMPBELL, *I. P. D.*

3d June 1795.

Appointment of an interim Commissary of St Andrew's.

THE following petition was presented to the Court, for and in name of Stewart Grace, Commissary-clerk of St Andrew's, humbly shewing, That John Patullo of Balhouffie, Commissary-principal of St Andrew's, died lately. Before that court there are several causes depending which require dispatch, and new applications are making for confirmations: That there is yet no person appointed to succeed Mr Patullo, and some time may elapse before that happen. In this situation, it becomes necessary that your Lordships appoint an interim Commissary for St Andrew's, until his Majesty shall be pleased to appoint one; and the petitioner begs leave to suggest Mr Cathcart Dempster, agent for the Bank of Scotland at St Andrew's, or Mr Robert Meldrum, writer there, as proper persons for holding the office.

May it therefore please your Lordships, to authorise and appoint a proper person to act as interim Commissary of St Andrew's, in place of Mr Patullo, with power to hold Courts from time to time, in the ordinary form, to issue forth edicts and other writs usual, to confirm testaments, to hear and decide all causes consistorial, and to exercise the other powers competent to the said office, until his Majesty shall appoint a Commissary for said commissariat, or until further orders from this Court; and to dispense with the minute-book. According to justice, &c.

WILL. ERSKINE.

3d June 1795.

The Lords having heard this petition, they authorise and appoint the said Mr Robert Meldrum, to act as interim Commissary of St Andrew's, in place of the late Mr Patullo, with power to hold courts from time to time, in the ordinary form, to issue forth edicts and other writs usual, to confirm testaments, to hear and decide all causes consistorial, and to exercise the other powers competent to the said office, until his Majesty shall appoint a Commissary for said commissariat, or until further orders from this Court; and appoint this petition, and deliverance, to be entered in the books of sederunt, and dispense with the minute-book.

ILAY CAMPBELL, *I. P. D.*

6th

1795.

6th June 1795.

Act for continuing Fees at the Bill-Chamber to the present Clerks' Servants.

UPON the 26th day of May last, the Lords of Council and Session, considering, That by their act of sederunt, dated 11th March 1789, there was appointed to be paid to the now deceased Laurence Inglis, then servant to the Clerks to the Bills, during his life, an additional fee of one halfpenny, upon the bills commonly called Plack Bills, presented at the ordinary hours of attendance, and an additional fee of twopence Sterling for such bills as should be presented after office-hours. And further, considering, That the present depute-clerks of the Bills, Andrew Miller, James Mercer and James Kerr, have, since the death of the said Laurence Inglis, the whole trouble of examining the warrants of the said bills, and writing the deliverances thereon: Therefore, the said Lords do hereby enact and ordain, That, over and above the fees now and formerly payable to the clerk's servant, of one plack, or one halfpenny, for every such bill presented during the usual hours of attendance at the office, and fourpence Sterling for every bill presented after office hours, the additional fees above mentioned, formerly appointed to be paid to the said deceased Laurence Inglis, shall continue to be paid to the saids Andrew Miller, James Mercer, and James Kerr, the present depute-clerks to the bills, jointly; so that the whole fees payable at the Bill-Chamber, for the said bills commonly called Plack Bills, shall be one penny Sterling for those presented at office-hours, and sixpence Sterling for those presented after the usual office-hours; and ordain this act to be recorded in the Books of Sederunt, and printed and published in the usual manner.

25th June 1795.

THE Act of Sederunt 11th March 1788, renewed till 1st July 1796.

Interim Appointment of a Macer.

12th November 1795.

THE Lords having this day taken under their consideration, That by the death of John Small, one of the macers, the other three are not sufficient to discharge their duty in the service of the Court, they therefore authorise and appoint John Ritchie to exercise the office of macer in this Court, until his Majesty shall be pleased to name a successor to the said John Small, or that the Lords give further orders thereanent, with right to a proportion of the fees of Court, during his service. And the said John Ritchie

chie accordingly took the oath *de fidei administratione* in Court, and the oaths to Government before the Lord Ordinary. 1795.

2d December 1795.

Appointment of an interim Sheriff of Aberdeenshire.

A Petition by the Sheriff-clerk of Aberdeenshire, praying for the appointment of an interim Sheriff, in consequence of the death of Mr Alexander Elphinstone, the former Sheriff-depute, in terms similar to that of the Sheriff-clerk of Ayrshire, dated 2d February 1793, was presented to the Court; and on advising the same, 3d December 1795, the Lords named Mr John Pringle, Advocate.

19th December 1795.

A Committee named to inquire into the State of Prisons.

THE Lords renewed the former appointment of the 9th July 1790, and nominated the Lord President, the Lords Eskgrove, Swinton, Dunfinnan, and Craig, to be a Committee of their number, whereof any three to be a quorum, the Lord President to be Convener.

11th March 1796.

Interim Appointment of a Sheriff-depute for Renfrewshire.

A Petition by the Sheriff-clerk of Renfrewshire, praying for the appointment of an interim Sheriff, in consequence of the promotion of Allan Maconochie, Esq; the former Sheriff-depute, to be one of the Lords of Session, in terms similar to that of the Sheriff-clerk of Ayrshire, dated 2d February 1793, was presented to the Court; who, on advising the same, named William Macdowall, Esq; Advocate.

30th June 1796.

Prolongation of the Act of Sederunt, 11th March 1788.

THE Lords having taken into their consideration, that their act of sederunt of the 11th March 1788, intituled, "Act for prolonging the time of the Lord Ordinaries sitting in the Outer-House," expires on the 1st day of July next, do resolve to continue the same to the 3d sederunt-day of January next; and, therefore, do hereby declare, that the said act shall continue in force till the said day.

L

Also,

1796. Also, this day, the Lords nominated and appointed the Lords Eskgrove, Swinton and Meadowbank, as a Committee of their number, whereof any two to be a quorum, and Lord Eskgrove convener, to consider the above act of sederunt, and report their opinion to the Court with regard to any alteration that may be thought proper and necessary.

6th July 1796.

Resolution with regard to Causes under L. 12 Sterling.

THE Lords recommend to their Committee of 30th June last*, to consider of what regulations may be necessary to prevent any lawsuit against debtors being brought into this Court in the first instance, unless the sums claimed from each defender amount to L. 12 Sterling.

7th July 1796.

Two Judges named of the Committee of the 13th February 1794.

THE Lords nominated and appointed Lords Craig and Polkemmet to be added to their Committee of the 13th February 1794, in place of the late Lords Henderland and Abercromby deceased.

12th November 1796.

Committee appointed to consider the Draught of a Charter for incorporating the Society of Solicitors.

THE Lords nominated and appointed the Lords Swinton, Dreg-horn and Polkemmet, as a Committee, to consider the draught of a charter, proposed to be obtained from the King, for incorporating the Society of Agents and Solicitors in this Court into a Corporation, whereof any two to be a quorum, and Lord Swinton convener; and to report their opinion to the Court.

Eodem die.

Committee as to Mr Robert Bell's Decisions.

THE Lords nominated and appointed the Lords Methven, Glenlee and Meadowbank, as a Committee of their number, to consider an application made to the Lord President relative to the decisions of the Court, published, or to be published, by Mr Robert Bell, writer to the Signet, whereof any two to be a quorum, and Lord Methven to be convener; and to report their opinion to the Court.

15th

* It does not appear from the Books of Sederunt that a Committee was appointed on the 30th June 1795.

15th November 1796.

1796.

Act for the Intimation of Petitions against Interlocutors in the Bill-Chamber.

THE Lords taking into consideration, That when any party who is dissatisfied with an interlocutor pronounced in the Bill-Chamber, means to reclaim to the whole Court, it is reasonable, and would tend to the dispatch of business, that the other party should have notice of such intention, in order that he may be prepared to instruct his counsel to appear for him, when the petition is moved in Court: Do therefore hereby ordain, That every such petition be intimated in the same way and manner that incidental petitions are ordered to be intimated by the acts of sederunt relative thereto, and with the like certification as in the case of incidental petitions: And also, that a copy of the said petition shall be lodged with the clerk of the bills, at the same time that it is intimated to the party or his agent. And the said Lords ordain this act to be inserted in the books of sederunt, and printed copies thereof affixed on the walls of the Inner and Outer House.

ILAY CAMPBELL, *J. P. D.*

17th December 1796.

Committee to consider Mr Bell's Decisions, and Memorial by the Writers to the Signet as to Lectures on Conveyancing.

THE Lords nominated and appointed their two former Committees, to wit, Lords Eskgrove, Swinton, Dreghorn, Polkemmet, Methven, Glenlee and Meadowbank, as a Committee of their number, to consider the application made to the Lord President relative to the decisions of the Court, published, or to be published, by Mr Robert Bell, writer to the Signet, and also to consider the memorial given in by the writers to the Signet, relative to the appointment of a proper person for giving lectures on conveyancing; whereof any three of the said Lords to be a quorum, and Lord Eskgrove to be convener; and to report their opinion to the Court. —Lord Craig added to the Committee.

17th January 1797.

Act concerning the Transmission of Processes from the Courts of Inferior Judges, in cases where Bills of Advocation are offered against the Proceedings of such Inferior Courts.

THE Lords taking into consideration, That when bills of advocacy are presented to them, complaining of the proceedings of Sheriffs or other inferior judges or magistrates, the making copies

1797. *pies* of these proceedings is a considerable expence, and it is often necessary that the principal writings produced in such courts should be laid before their Lordships; they do therefore hereby enact and ordain, *1^{mo}*, That in all cases where such bills of advocacy are presented, and where either of the parties, or the Lord Ordinary at the time acting as Ordinary on the Bills, shall think it necessary or proper that his Lordship should have before him the original proceedings and productions in the inferior court, it shall be incumbent upon the complainer in the bill of advocacy to have that production made, by transmission of the process at his expence; and it shall be the duty of the clerk of such inferior court, at the request of either of the parties, and their showing evidence that such a bill has been presented, to transmit to the clerk to the bills, or his depute, in a sealed cover, the whole proceedings, minutes and productions, with a full inventory thereof, signed by him; providing the transmission of such process shall not be intrusted to the complainer, when the suppression or alteration of any part of the process may be for his advantage.

2^{do}, The clerk of the bills, or his depute, who receives the said process, shall give a receipt for the same to the person who delivers it to him, to be transmitted to the clerk of the said inferior court, and at the same time shall advance the postage or expence of the carriage of such process, which expence shall be repaid him by the said complainer.

3^{ti}, That when the clerk of the inferior court shall send the process as aforesaid to the clerk of the bills, he shall be entitled to demand, and to receive, from the complainer in the bill of advocacy, as a fee for his trouble, a sum equal to one-fourth of what a full extract of the proceedings, exclusive of productions, would amount to; providing always, that the said fee shall not be under 5 s. nor exceed 20 s. Sterling, whatever the length of the extract may be computed to be, and the said clerk of the inferior court shall allow the said fee in part of what he may afterwards be entitled to receive for an extract of the decreet, when the cause is finished before the inferior court.

4th, In case the bill of advocacy shall be finally refused or remitted, the clerk of the bills shall return the process in a sealed cover to the clerk of the inferior court, who upon receiving the same shall return the receipt of the clerk of the bills to him, and shall advance the expence of the carriage, to be repaid him by the said complainer.

5th, In case of a second bill of advocacy, the additional proceedings only shall be reckoned in computing the length of the extract.—And the Lords ordain this act of sederunt to be affixed on the walls of the Inner and Outer House, in the usual form, and to be entered in the Books of Sederunt.

ILAY CAMPBELL, I. P. D.

Eodem die.

THE act of sederunt 11th March 1788 renewed to 11th July next.

Appointment

Appointment of an Interim Sheriff-depute for Lanarkshire. 1797.

16th February 1797.

A Petition subscribed by the Sheriff-clerk of Lanarkshire, praying for the appointment of an interim Sheriff, in consequence of the promotion of William Honyman, Esq; the former Sheriff-depute, to be one of the Lords of Session, in terms similar to that of the Sheriff-clerk of Ayrshire, dated 2d February 1793, was presented to the Court, who, on advising the same, named Mr Robert Sinclair, advocate.

29th June 1797.

THE act 11th March 1798, renewed till 5th federunt-day of July 1798.

16th January 1798.

Act concerning the Inrolment of Causes in the Inner-House, and returning of Processes to the Clerks.

THE Lords, in order to enforce the due observance of the regulations respecting the inrolment of bills, answers, reports, and hearings in presence, established by acts of federunt, dated 13th of July 1739, and 16th of January 1755, which require all causes to be inrolled in the books of the keeper, previously to their being brought into the short roll for advising; do appoint and ordain, that, in time coming, every cause shall be regularly inrolled in the books of the keeper within six federunt-days after the answers, or other paper by which the debate is closed, shall have been put into the Lords' boxes during the sitting of the session; and in case such papers shall have been boxed during the spring or autumn vacation, or Christmas recess, the cause shall be inrolled in the books of the keeper, within two days at furthest after the recommencement of the session; and all cases taken to report from the Outer-House shall be inrolled as above, within the space of six federunt-days after the Lord Reporter shall have granted his warrant for inrolling the same. And the Lords declare, that each party failing to inrol as above, shall forfeit an amand of 40 s. Sterling to the poor. And in order that all fines thus imposed may be strictly levied, the Lords appoint the keeper of the Inner-House rolls to enter in a book a list of the amands so incurred, which book shall be patent to the collector of the poors' funds for the time being, every session day, from which he may be enabled to recover the same; for which purpose, he is hereby directed to use the means authorised by act of federunt, "for the more speedy and effectual levying of fines and amands, dated the 26th day of February 1794." And in case the said keeper do in any instance neglect, or refuse to enter such an amand in his book, or to make the same patent to the collector of the poors' money, he shall be subjected

1798. jected in the like fine of 40 s. to the poor, *toties quoties*, which the collector is hereby ordered strictly to uplift, and account for, with the other fines.

The Lords further considering, that great inconveniencies arise from the non-observance of the acts of sederunt of the 19th of December 1739, and 24th of July 1741, against detaining processes too long from the clerks; do hereby ordain, that in time coming, the process be returned to the clerk, between the hours of five and six o'clock in the afternoon, at furthest, of the day when either a petition or an answer is put into the Lords' boxes, and the said acts of sederunt to be in other respects observed. And declare, that in time coming, no amand incurred through neglect of the above act shall be dispensed with. And appoint the clerks' servants in the different offices to furnish a list of the contraveners to the collector of the poors' money for the time being, in order that the same may be recovered: Excepting always from this regulation such processes in which petitions, or other papers, shall be boxed on Saturdays; in which case, the processes are hereby appointed to be lodged with the clerks upon the Mondays following, between the hours of twelve at noon and one afternoon, and that under the above-mentioned penalty. The same rules are to be observed with respect to causes taken to report from the Outer-House upon informations, and likewise in summary causes, not abiding the course of the long roll.

Lastly, The said Lords, taking under their consideration the act of sederunt, dated the 11th day of March 1791, regulating the fees of the keeper of the Inner-House rolls, and observing that article fifth thereof, allowing a fee of 2 s. 6 d. upon refused petitions, is imperfect, do hereby enact, That the same fee shall be paid in all cases of reclaiming petitions, which are not to be answered, whether the same be refused or granted, or remitted to an Ordinary. And the Lords appoint this act to be printed, and intimated on the walls of the Inner and Outer Houses, in common form, and entered in their books of sederunt.

ILAY CAMPBELL, I. P. D.

6th February 1798.

Craigcrook's Mortification.

THE Lords having advised a note for the Trustees of Mr Strachan of Craigcrook's mortification, they appoint Lord Glenlee Lord Overseer thereof, in the room of the late Lord Henderland.

10th March 1798.

Act regulating the Fees payable to the Assistants of the Clerks of Session.

THE Lords, having taken into consideration an application made to them for ascertaining and regulating the fees payable to the assistants of the Clerks of Session, Do hereby enact and ordain, That

OF THE COURT OF SESSION.

47

That from and after the date hereof, the said fees shall be paid according to the table hereafter insert: And they prohibit and discharge the Clerks of Session, from permitting the assistants in their different offices, to ask, take, or receive, any other or greater fees, than what are contained in the said table, as they will be answerable. 1798.

For summonses, suspensions, and advocations, to be paid by the pursuer or raiser when first brought into Court, and levied by the keeper of the Outer-House rolls, at the enrolment thereof, who is hereby required to levy the same, and distribute the whole proceeds equally amongst the six assistants,

L. 0 1 6

At lodging defences, condescendences, representations, answers, memorials, replies, and the like, each

0 1 0

At transmitting processes to the Lords Ordinary for advising, to be paid by the party who lodges the last paper previous to transmission,

0 1 0

All borrowings in processes under forty articles, (except rankings and multiplepointings, as hereafter specified,)

0 1 0

If containing above forty articles, but under one hundred,

0 2 0

For every other hundred articles, till the borrowings amount to five shillings, but no further.

0 1 0

For borrowings in rankings or multiplepointings by common agents, if under thirty articles,

0 2 6

And if one hundred and upwards,

0 5 0

For every interest in these processes, when borrowed by agents for individual creditors, and on which the clerks fees have been paid,

0 1 0

But these, when borrowed by one person, not to exceed in whole,

0 5 0

At outgivings to extractors,

0 1 0

At lodging an interest in a ranking or multiplepointing,

0 1 0

At marking the appearance of a person as a party, not formerly a pursuer or defender in the cause,

0 1 0

At marking production of writings other than those labelled on, and produced by the pursuer before defences are lodged, if under thirty articles,

0 1 0

If thirty articles, and under one hundred,

0 2 0

And for every other fifty articles,

0 1 0

For judicial intimations,

0 2 6

For officiating at the elections of common agents in multiplepointings,

0 7 6

For ditto in rankings,

0 10 6

For copying minutes and interlocutors, each sheet,

0 1 0

For drawing articles of roup, states of interests in rankings and multiplepointings, interlocutors of ranking; first sheet,

0 5 0

Every

1798. Every other sheet,	-	-	-	0	3	0
For extending the same after being revised, each sheet,	-	-	-	0	1	0
For officiating at sales for each lot, the upset price where-	-	-	-	-	-	-
of is L. 100 or upwards,	-	-	-	1	1	0
When the upset price is below L. 100, if only one lot,	-	-	-	0	10	6
And if more than one lot under that upset price, the fee	-	-	-	-	-	-
for such lots altogether, however numerous, shall be	-	-	-	-	-	-
only in whole,	-	-	-	1	1	0
At making searches for sleeping processes, within nine	-	-	-	-	-	-
years back from the period of the search,	-	-	-	0	2	6
If more than nine years, but under twenty,	-	-	-	0	5	0
If more than nineteen years, but under thirty,	-	-	-	0	7	6
If for thirty years or upwards,	-	-	-	0	10	6
At requesting captions for processes,	-	-	-	0	1	0
At obtaining warrant from a Lord Ordinary to inrol,	-	-	-	-	-	-
each party (no fee being chargeable with the papers	-	-	-	-	-	-
then lodged for consideration of the Inner-House),	-	-	-	0	1	0
At production of all reports of acts and commissions, and	-	-	-	-	-	-
oaths of verity,	-	-	-	0	1	0
For preparing reports upon remits, a fee according to the	-	-	-	-	-	-
trouble the business requires, and subject to the final	-	-	-	-	-	-
determination of the Lord Ordinary to whom the re-	-	-	-	-	-	-
port is made.	-	-	-	-	-	-

The Lords ordain the said fees to be paid, the first excepted, to the assistants severally who perform the duty for which they are allowed, and that by the persons at whose request it is performed. And further, the Lords prohibit and discharge all agents and practitioners before this Court, and all others concerned, from transmitting any process or parts of process to the Lords Ordinary, except through the Clerks of Court and their assistants: And prohibit and discharge the clerks of the Lords Ordinary from receiving any process, part of process, or paper, intended to be produced, or to form a part of process, from any other person or persons than the said clerks and their assistants. And they appoint the clerks and their assistants to transmit all representations given in and marked by them, on or before one o'clock of the first sederunt-day following the date of the said ingiving. And the said Lords ordain the Clerks of Court, henceforth, to make out and maintain a correct inventory of the articles of which each process consists, and which inventory shall specify the dates of the productions and ingivings hereafter made, and always form one of the articles of said process, when transmitted to the Lords Ordinary for advising. And the said clerks and their assistants are also hereby ordained, to enter in a paper apart, to be kept in each process that shall hereafter come into Court, the steps of procedure which therein take place, from the first calling before the Lord Ordinary in the Outer-House, to the final judgment in the cause; in which paper they shall mark the callings, appearances, motions, ingivings, orders and interlocutors, according to the series as they take place in Court. And it is hereby directed, that if any deliverance is given upon a representation

or

or other application, for any one party, while the process is borrowed up by the other, such deliverance shall be transcribed by the said clerks or their assistants into the record of procedure, before the process be again transmitted for advising. 1798.

And they enact and declare, That no person shall hereafter be qualified to be admitted as an assistant to the clerks, unless he appear before the Lord Ordinary in the Outer-House, and make oath *de fidei*, and also, that he has neither paid nor promised to pay, nor come under any understanding, by himself, or by any other person or persons, to pay, nor in fact will pay, any sum of money, or make good any valuable consideration whatever, for obtaining or continuing to enjoy said office. And they also enact, that in case it shall afterwards be discovered, that such oath has not been consistent with truth, or has not been duly observed, the offender shall, on the fact being established, be thereby rendered incapable of holding the said office of assistant. And the Lords appoint this act to be recorded in the Books of Sederunt, and to be printed and published in the usual form, for the information of all concerned, and to be intimated in the minute book.

ILAY CAMPBELL, I. P. D.

10th March 1798.

Interim Act, allowing certain Additional Fees to be exacted by Andrew Miller, Depute-Clerk of the Bills.

THE Lords, considering, that by the operation of the Small Debt Act, and other circumstances, the fees and perquisites of Andrew Miller, Depute-clerk of the Bills, have been considerably reduced; and that it is in the view of the Court to make certain regulations, by a new act of sederunt, relative to the Bill-Chamber, but which cannot be prepared or passed earlier than the next summer session; and whereas it is proper, that, in the mean time, the said Andrew Miller should be permitted to take certain additional fees, in order to enable him to carry on the business: Therefore, the said Lords hereby authorise and allow the said Andrew Miller to exact, and apply to his own use alone, the following additional fees and perquisites in the Bill-Chamber, from the date hereof, until the third sederunt-day of June next, or until a more permanent regulation shall be established, viz.

An addition of Four shillings and fivepence halfpenny Sterling, to the present fee payable on presenting bills of advocacy, making advocations the same with suspensions:

The additional sum of Three shillings and sixpence, upon every bill passed without answers or replies:

The additional fee of One shilling and sixpence, upon every bond of caution presented.

ILAY CAMPBELL, I. P. D.

1798.

Eodem die.

Seal of Court.

THE seal is kept in a box, to which there are two keys, in a press at the back of the Lord President's chair. One of the keys, and that of the press, are lodged with the Lord President, and the other key of the box with Lord Swinton, and got when wanted from their clerks.

19th May 1798.

Committee with regard to Causes under L. 12 Sterling.

THE Lords remit to Lords Elkgrove, Stonefield and Swinton, to inquire into the practice of including a number of small debts in one summons before the Court; and to consider whether any new regulation is necessary concerning it. Lord Elkgrove convener.

28th June 1798.

THE act of sederunt of 11th March 1788, renewed till 5th sederunt-day of July 1799.

4th July 1798.

Interim Appointment of a Keeper of the Register of Seifins for Kinrossshire.

A Petition praying for the appointment of an interim keeper of the register of seifins for the shire of Kinross, in terms similar to that of James Hill, dated 22d December 1792, before inserted, was presented by George Peat, writer, the son of the former keeper, and, on advising it, the Court appointed the petitioner.

27th November 1798.

Act imposing a Stent of *Two per cent.* upon the Members of the College of Justice, for the Maintenance of the Indigent Wives and Families of Sailors and Soldiers who are absent in the Service of their Country.

THE Lords, having considered an application made to them by the Magistrates of Edinburgh, communicating certain acts of the Town-Council, made in the years 1795 and 1796, and this present year 1798, authorising and recommending voluntary contributions, for the assistance and support of the wives of soldiers and sailors, who are abroad in the service of their country,

country, and who had, by residence, acquired a legal settlement in the city; together with reports from the committee for managing these contributions, which had been laid before a meeting called for that purpose, of some of the Judges, Magistrates, Dean of the Faculty of Advocates, Deputy-Keeper of the Signet, and other members of the College of Justice, with the resolutions of that meeting, recommending (in consequence of the last voluntary contribution having failed) an additional stent or assessment to be laid upon all the inhabitants within the royalty: and having also considered reports from the Dean and Faculty of Advocates, and from the Deputy-Keeper and Writers to the Signet, agreeing to an assessment of two *per cent.* upon the rents of their houses, being laid upon them, as well as upon the other inhabitants within the royalty, providing the same be laid on, and levied by authority of an act of sederunt, in the same terms, and under the same conditions, as was done, for a similar purpose, by acts of sederunt, 29th January 1678, and 18th February 1732. And the Lords being convinced, that an assessment is expedient and necessary for the purposes before mentioned; therefore the Lords of Council and Session do, with consent of the Magistrates and Town-Council, authorise and empower the said Magistrates to impose a stent of two *per cent.* for two years, commencing from the term of Whitsunday last, upon all the inhabitants, burghesses and others, within the royalty, according to the rents of the houses severally possessed by them, to be applied for the assistance and support of the indigent wives and families of sailors and soldiers, who are presently absent in the service of their country. And the said Lords for themselves, and likewise the Advocates, Clerks, Writers to the Signet, and others, members of the College of Justice, have voluntarily and freely offered to pay the above two *per cent.* according to the rents of the houses they possess within the royalty, yearly, for the space of two years, commencing from the said term of Whitsunday last. And declare, That in case of deficiency in payment, by any of the members of the College of Justice, the collector of the said stent shall present to the Lords of Session a list of the deficient, on which the Lords will grant such diligence as to them shall seem proper. And in regard the Writers to the Signet have full power over their own members in the first instance, ordain the list of deficient in that society, to be laid before the Keepers and Commissioners: And it is further declared, That this offer shall no ways prejudice the said Lords, and remanent members of the College of Justice, from being free from all stents and impositions within the town of Edinburgh, except the cess when imposed by law. And the said Lords declare, That they will name some of the members of the College of Justice to be present when the stent shall be laid on, to see that the same be equally imposed; and for that effect, appoint the Magistrates to give intimation to the Court of the time it is to be laid on: And ordain this act to be recorded in the Books of Sederunt, and printed and published in common form.

1799.

27th February 1799.

Appointment of an Interim Commissary of St Andrew's.

*Unto the Right Honourable the Lords of Council and Session,
The Petition of Stewart Grace, Commissary-clerk of St Andrew's.*

Humbly Sheweth.

THAT Robert Stark, writer in Cupar, Commissary-principal of St Andrew's, died in December last. Before that Court there are several causes depending which require dispatch, and new applications are making for confirmations: That there is yet no person appointed to succeed Mr Stark, and some time may elapse before that happen. In this situation, it becomes necessary that your Lordships appoint an interim Commissary for St Andrew's, until his Majesty shall be pleased to appoint one; and the petitioner begs leave to suggest Mr Cathcart Dempster, agent for the Bank of Scotland at St Andrew's, as a proper person for holding the office.

May it therefore please your Lordships, to authorise and appoint a proper person to act as interim Commissary of St Andrew's in place of Mr Stark, with power to hold courts from time to time, in the ordinary form, to issue forth edicts and other writs usual, to confirm testaments, to hear and decide all causes consistorial, and to exercise the other powers competent to the said office, until his Majesty shall appoint a Commissary for said commissariat, or until further orders from this Court; and to dispense with the minute-book. According to Justice, &c.

JOHN MACFARLANE.

27th February 1799.

The Lords having heard this petition, they authorise and appoint Mr Robert Meldrum, Sheriff-substitute of Fife, to act as interim Commissary of St Andrew's in place of Mr Stark; with power to hold courts from time to time, in the ordinary form, to issue forth edicts and other writs usual, to confirm testaments, to hear and decide all causes consistorial, and to exercise the other powers competent to the said office, until his Majesty shall appoint a Commissary for said commissariat, or until further orders from this Court; and dispense with the minute-book; and appoint this petition and deliverance to be entered in the Books of Sederunt.

ILAY CAMPBELL, I. P. D.

8th March 1799.

1799.

A Committee appointed with regard to Improvements on the Inner-House.

THE Lords nominated and appointed the Lords Meadowbank, Cullen and Armadale, as a committee of their number, any two to be a quorum, and Lord Meadowbank convener, to meet with a committee to be appointed by the Dean and Faculty of Advocates, in order to consider what reparations, alterations and additions, are proper and necessary to be made on the Inner-House, for the better accommodation of the Court ; and to report.

Eodem die.

Collectors of Decisions authorised to publish the Acts of Sederunt.

ON the motion of the Lord Advocate, as Dean of Faculty, the Lords allowed and authorised the Collectors of Decisions appointed by the Faculty of Advocates, to publish the Acts of Sederunt passed since the late publication of them in 1790, and in future ; and, for that purpose, to have access to, and take excerpts from, the Sederunt Books of the Court.

14th June 1799.

Act concerning the Bill-Chamber.

THE Lords, taking into their consideration, that bills of suspension are often presented for no other purpose, than merely to procure a temporary sist of execution ; and, that the rules hitherto observed as to finding caution, both in suspensions, and in certain cases of advocacy, have been attended with many inconveniencies, and require to be altered, do therefore enact,

1st, That from and after the 11th day of July next, when a bill of suspension is offered upon caution in common form, if the Lord Ordinary, upon reading the bill, shall think proper to grant a sist, the complainer shall lodge his bond of caution with the clerk, on or before the day when the sist expires ; and the deliverance upon the bill shall be so expressed, as to leave the charger at liberty to delay giving in his answers till he has an opportunity of seeing the bond of caution ; and in case the bond shall not be so lodged, or being lodged, the same is not consented to by the charger, or received as sufficient by the clerk, the bill shall of course be held as refused for want of caution, and diligence, or other proceedings, may, upon a certificate of the fact, issued by the clerk, be then carried on as if the bill had never been presented or sisted ; unless the Lord Ordinary for the time, upon a written application from the complainer or his agent, and consignation of a sum to be fixed by his Lordship, (not exceeding L. 5 Sterling), in the clerk's hands, to answer for expences in the Bill-Chamber, if awarded, shall see cause to prorogate the sist for a further period, not exceeding ten days, in order that

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1799. the complainer may, either within that time, procure sufficient attestors, in terms of the act of sederunt 27th December 1709, or amend his bill, by praying, that it should be passed on *juratory caution*; but it is declared, that no more than one application for such prorogation of the fist shall in any case be competent in the Bill Chamber:—And the same rules shall take place as to bills of advocacy in removings, where caution is required.

2dly, That in all cases, where bills of suspension are offered upon *juratory caution*, the complainer shall produce, in the clerk's hands, along with his bill, or at least before the same is presented to the Lord Ordinary for the purpose of obtaining a fist; 1st, The bond of caution; 2dly, A full inventory of his subjects and effects of every kind; 3dly, His oath or deposition, emitted before any Justice of Peace, or other magistrate, in the usual form; and also, an enactment subjoined to the inventory, bearing, that he will not dilapidate or dispose of any of his effects, or uplift any of the debts due to him, without consent of the charger or his agent, (under pain of imprisonment, or being otherwise punished as guilty of a fraud), till the suspension is discussed, and until there be an opportunity of doing diligence against him, in case the letters shall be found orderly proceeded. And further, in case the Lord Ordinary shall think proper to grant a fist upon any such bill, the complainer shall, on or before the day when the fist expires, produce in the clerk's hands, the vouchers of any debts due to him, and the title-deeds of any heritable subject belonging to him, so far as he or his agent are possessed of the same, or have access to them; and he shall, if required by the charger, grant a special disposition to him of any such heritable subject, in security of his demand; the said disposition to be made out at the expence of the charger, and by his agent, and the same to remain with the title-deeds, and vouchers aforesaid, deposited in the hands of the clerk to the bills, subject to the direction of the Court, till the suspension is discussed; it being understood, that the general disposition *omnium bonorum*, heretofore required, is now to be dispensed with, as having been found by experience to be nugatory, and only attended with unnecessary expence to the granter.

3dly, That every bond of caution, whether in cases of *juratory* or common caution in the Bill-Chamber, shall, in time coming, be extended by the officiating or depute-clerk to the bills, in the proper form, and containing the necessary clauses adapted to the regulations prescribed by this and other acts of sederunt of the Court; for doing which, the clerk shall be entitled to demand a fee of 2 s. 6 d., and no more, for each bond; and in cases of *juratory caution*, along with the bond, he shall also give out a form of the oath to be taken and subscribed by the complainer, and a form of the inventory, and enactment thereon; for both which, a fee of 1 s. shall be charged, and no more.

4thly, When a bill of suspension or advocacy is appointed to be answered, the respondent shall not be allowed more than a week after expiry of the fist; or, upon special cause shown, a week longer to put in his answers, in order that the litigation in the Bill-Chamber

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may not be too long protracted; and the time allowed for replies, which is at present confined to a week, may, upon cause shewn, be extended to a fortnight, and no longer; and when either an answer or a reply, or any other paper is given in by a party in the Bill-Chamber, his agent shall give notice in writing, on the same day, to the agent for the other party, that such paper is in the clerk's hands, and a certificate of such intimation shall be lodged with the clerk; otherwise the said paper shall not be laid before the Lord Ordinary who is to advise the bill. 1799.

5^{thly}, When a bill of suspension or advocacy is passed by the Lord Ordinary on the Bills, the complainer shall expedite the letters at the Signet, within ten days thereafter, otherwise the same shall fall to the ground, and the respondent shall be at liberty, upon a certificate from the Signet-office, obtained at any time after the said period is elapsed, bearing that the letters are not expedite, to go on with his diligence or other proceedings, as if the bill had been refused;—And further, in that case, the respondent shall be at liberty to apply to the Ordinary on the Bills, for his expences, both against the principal and the cautioner; it being understood, that, in time coming, the cautioner is to be liable as well as the principal, for the expences, both in the case already mentioned, and in the case of the respondent's obtaining protestation in the Outer-House, against the complainer for not insisting; and the expences being so awarded, the clerk to the bills shall deliver up to the respondent an extract of the bond of caution, in order that he may put the same in execution accordingly.

6^{thly}, That where any bill of suspension or advocacy, advised upon its merits, has been *refused*, either in session time, (except as in the next article), or during the last three weeks of the spring or of the autumn vacation, or during the Christmas recess, it shall not be competent to the complainer to present any second or other bill, to the same or any succeeding Ordinary on the Bills; but the Lord Ordinary may, upon cause shown, prorogue the sif, so as to give an opportunity of reclaiming to the whole Court, provided the reclaiming petition shall be given in to one of the Principal Clerks of Session, and moved in Court within eight sederunt-days after the date of the Lord Ordinary's deliverance refusing the bill, if pronounced in session time, or within four sederunt-days after the Court's next sitting, if the deliverance has been pronounced during the last three weeks of a spring or an autumn vacation, or during the Christmas recess. And in case any such bill of suspension or advocacy has been *passed* during the times before described, it shall in like manner be competent for the party thereby aggrieved, to reclaim to the whole Court, provided the reclaiming petition be moved and boxed within the number of days before mentioned, the Lord Ordinary on the Bills being hereby authorised to make an order, at the instance of the charger, against expediting the letters in the mean time.

7^{thly}, That where a bill of suspension or advocacy, advised on its merits, has been refused during the four last sederunt-days of the winter or summer sessions, or during the spring or the autumn vacations,

1799. cations, (excepting within the last three weeks of each of those vacations,) it shall be competent for the complainer in any such refused bill, to present one other bill, to the next succeeding Ordinary on the Bills; but in case the second bill shall also be refused, it shall not be competent to make any other application of that kind, without some material alteration having occurred in the circumstances of the case, in consequence of facts recently come to the knowledge of the party, to which he or his agent shall make oath; nor shall there be any prorogation of the fist, unless the Lord Ordinary, by whom the bill is refused, shall think proper, upon good cause shewn, to grant such prorogation, at the time of refusing the bill. But providing and declaring always, That (as formerly has obtained) in all cases where bills of suspension or advocation have either been refused or passed, during any time, either of the spring or of the autumn vacation, and execution or other legal proceedings have not followed upon the refusal of such bills, or the letters of suspension or advocation have not been expedite, upon bills that have been passed between the dates of the Lord Ordinary's deliverances, refusing or passing such bills, and the commencement of the session next ensuing, it shall still be competent for the parties concerned to reclaim by petition to the whole Court, against the saids deliverances, within the first four sederunt-days of the said next session, in the same manner as if such deliverances had been pronounced within the last three weeks of such vacation.

8thly, That when a bill is either passed or refused, it shall be entered in the minute-book of the Bill-Chamber by the clerk, as soon as the bill, with the deliverance thereon, is returned into his hands, or at least in the course of that day; and the certificate of refusal shall not be delivered out, till twenty-four hours after the same has appeared in the minute-book, the date and hour of its being so entered being marked in the book. And the act of sederunt, of the 3d July 1677, concerning the sisting of execution upon bills of suspension, in so far as the same is inconsistent with any of the foregoing regulations, is hereby repealed, and shall have no further effect in future.

And, 9thly, Whereas the act of sederunt, dated 18th February 1686, Declaring the clerk of the bills liable for the party's damage, as well when he refuses a cautioner who is sufficient, or bolden and repute to be sufficient, as where he receives an insufficient cautioner, has by experience between found to be liable to misconstruction, and to lay the clerks of the bills under difficulties in the execution of their duty; Therefore, the said Lords do hereby repeal the said act, and declare, That, in time coming, the clerks of the bills shall be responsible for the due and faithful execution of their duty, whether in receiving or rejecting cautioners, according to the rules of common law and justice, applicable to the circumstances of the cases that may hereafter occur.—And appoint this act to be inserted in the Books of Sederunt.

ILAY CAMPBELL, I. P. D.

1799.

15th June 1799.

Sentence against Hew Darby.

IN the conjoined petitions and complaints insisted in and depending before this Court, at the instance of Robert Dundas, Esq; of Arncliffe, his Majesty's Advocate for his Majesty's interest, against Hew Darby, writer in Kilmarnock, late tobacconist there, the Lords pronounced the following interlocutor:

Having considered the state of these complaints, proof adduced, and writings produced, and heard counsel for the parties; in respect it appears from the execution returned upon the warrant issued by the Court upon the 7th current, for apprehending the person of the said Hew Darby, that he has absconded and cannot be found; therefore, grant warrant for letters of horning, directed to messengers at arms, to command and charge the said Hew Darby, personally, or at his dwelling-place, if within Scotland for the time, and, if forth thereof, at the market-cross of Edinburgh, pier and shore of Leith, to compare in Court upon the third sederunt-day of November next, in the hour of cause, with continuation of days, to shew cause why judgment should not be pronounced against him as accessory to, or art and part guilty of, the crime of fraudulent bankruptcy, and other frauds, as charged in the complaints exhibited against him, under the pain of rebellion, and of putting him to the horn; wherein if he fail, the said day being bygone, that the said messenger or messengers denounce him his Majesty's rebel, and put him to the horn, and to escheat and inbring all his moveable goods and gear, for his Majesty's use, for his contempt and disobedience. And ordained this warrant to be inserted in the Books of Sederunt.

ILAY CAMPBELL, I. P. D.

27th June 1799.

Lord Methven named one of the Arbiters in the Twopenny Act.

THE Lord Methven appointed by the Court one of the arbiters for carrying the act of George the Third, intituled, "An act for the further continuing for thirty-eight years, the term granted by an act of the 25th year of the reign of his late Majesty George the Second, for continuing the duty of two pennies Scots upon every pint of ale and bear sold in the city of Edinburgh, and places adjacent, for the purposes therein mentioned, and for explaining and amending the said act."

28th June 1799.

THE Act of Sederunt of the 11th March 1788, renewed till 5th July 1800.

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29th June 1799.

Committee named to inquire into the State of Prisons.

THE Lords renewed their former appointment of 9th July 1790, and nominate the Lord President, and the Lords Eskgrove, (now the Lord Justice-Clerk,) Dunfinnan, Craig, Polkemmet, Meadowbank and Armadale, to be a Committee of their number, whereof any three to be a quorum, and the Lord President to be convener.

17th December 1799.

James Gibson, Writer in Edinburgh, appointed Interim Keeper of the Minute-Book.

Unto the Right Honourable the Lords of Council and Session,

The Petition of James Gibson, writer in Edinburgh;

Humbly Sheweth,

THAT the petitioner has been employed for these six years past as clerk to Alexander Gordon, keeper of the minute-book, and for a considerable time past has done the whole duty of the office, in consequence of Mr Gordon's total inability, arising from a constant state of extreme bad health. That the said Alexander Gordon died on the 14th of this month, at Deebank, in the stewartry of Kirkcudbright. In consequence of Mr Gordon's death, the business of the said office must be suspended, whereby great inconvenience will arise, unless your Lordships are pleased to interpose, by naming an interim keeper; and the petitioner flatters himself your Lordships will, under all the circumstances of the case, be disposed to consider him as the fittest person to hold the office in the mean time.

May it therefore please your Lordships to nominate and appoint the petitioner interim keeper of the minute-book, and authorise and empower him to exercise the said office, with the ordinary powers thereof, until a commission appointing a keeper shall be produced to the Court.

CHA. HOPE.

The Lords having heard this petition, they nominate and appoint the petitioner interim keeper of the minute-book, and authorise and empower him to execute the said office, with the ordinary powers thereof, until a commission appointing a keeper shall be produced to the Court, or that this warrant shall be recalled; and ordain this petition, and interlocutor, to be entered in the Books of Sederunt; and dispense with the minute-book.

ILAY CAMPBELL, I. P. D.

18th

18th January 1800.

1800.

COMMITTEE on Bill-Chamber regulations renewed.

29th January 1800.

Procedure on Petition for Writers' Clerks, &c.

YESTERDAY, the Lords remitted the petition for the clerks, apprentices, &c. to the writers, agents or solicitors, and lawyers' second clerks, to the committee named by the Court upon the fees and regulations in the Bill-Chamber, to consider the claim of the petitioners, and report their opinion thereupon to the Court.

4th March 1800.

Act appointing Sequestrations during the Vacation to be inserted in the Minute-book.

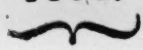
IT having been represented to the Court, that it would be a considerable advantage to the public, if the sequestrations awarded or recalled during the vacation, were entered in the minute-book, the Lords do, therefore, enact and ordain, that, for the future, the clerks to the sequestrations, awarded or recalled by the Lords Ordinary on the Bills in time of vacation, shall enter them in their minute-book, in the same way as those awarded or recalled by the Court in time of session; and authorise the keeper of the minute-book, to enter them in the general minute-book, upon the first day of every session, he always receiving the usual fee payable for intimations; and, that the practitioners may be the better informed when such sequestrations are awarded, appoint the clerk's servant in the Bill-Chamber to keep a roll of all sequestrations awarded during the vacation, for which he shall receive a fee of one shilling from the person applying for the sequestration, this roll to be patent to all concerned, without any other fee or reward; and appoint this act to be entered in the Books of Sederunt, and printed and published in the usual form.

ILAY CAMPBELL, I. P. D.

11th March 1800.

Act concerning Proofs.

WHEREAS, by the ancient mode of proceeding in this Court, the relevancy of disputed facts was, for the most part, fixed by interlocutors of the Lord Ordinary, or of the Court, before any warrant for proving was issued; and, when afterwards it became more the practice to allow acts, before answer to the relevancy, it was still considered to be the duty of the Judge, to admit only such facts and allegations to proof, as appeared to him material to the issue

1800.  issue of the cause; and, when witnesses were cited upon incident diligence to appear in Edinburgh, the regular form was to bring them before the Ordinaries, appointed in rotation to administer oaths, and take such examinations; and, further, when the proof, upon being concluded, was reported to the whole Court, a state thereof was carefully prepared, in a certain manner directed by various regulations then in force.

And whereas, in the late practice of the Court, the above salutary forms have been too much disregarded; and, on that account, an entry was made in the Books of Sederunt, on the 15th June 1774, bearing, that "The Lords taking under consideration, that, "in several prepared states, lately given in to the boxes, much matter has been introduced foreign to the points at issue, by which "means these states have swelled to an enormous bulk, occasioned "much unnecessary expence to the parties, and much needless "trouble to the Court; and observing, that this evil chiefly proceeded from the careless and improper manner in which states "have been prepared;" therefore, a Committee was named to consider this matter, and how, and in what manner, it could be remedied, and to report; but nothing further appears to have been done at that time, and the evil has since grown to a much greater height than before.

And whereas, from the increase of business, it has become extremely difficult for any of the Judges to officiate personally in taking the depositions of witnesses, and it would often be considered as a great hardship to bring witnesses from distant parts of the country to be examined in Edinburgh; but, on that account, it is so much the more necessary that the statements of facts should be carefully adjusted, and the commission or warrant for proving, directed to persons duly qualified to act as delegates of the Court in so important a branch of its official duty; and, further, it is of importance, that proofs, when concluded, should be arranged, and laid before the Court in a proper manner, as formerly was the practice; The Lords have therefore resolved, and do hereby resolve and declare:

I. That no act, or other warrant for proving, shall henceforth go out in any cause, till a distinct statement of the disputed facts and allegations shall have been previously made, in the form of a condescendence and answers, or mutual condescendences; which papers shall be so framed, as to contain no argument or discussion of any kind, nor even any recital of the proceedings; but, taking it for granted, that the nature of the cause is already understood from the libelled summons, defences, and pleadings, shall only state, under distinct heads, or articles, the special facts and circumstances pertinent to the cause, which are alleged, and offered to be proved on either side, in order that the same may, as nearly as possible, be brought to a precise issue, and may (so far as thought material) be admitted to proof in that form, either before answer to the relevancy, or after determining upon it, as the case may require.

II. That when a commission for proving is extracted, it shall contain nothing but the libelled summons, the defences, the condescendence

scendence and answers, or mutual condescendences, framed and adjusted as before, and the interlocutors of the Lord Ordinary, or of the Court, without being mixed with argument of any kind. 1800.

III. That, if the proof is to be reported to the whole Court, the commission shall (unless otherwise ordered by the Court, upon special cause shown) be directed only to one or other of the members of the Faculty of Advocates, who are known to be resident in Edinburgh, and attending this Court, during the winter and summer sessions, and who are of more than of five years standing at the bar, or to such of the Sheriff or Stewart-deputes, who are resident in Edinburgh during the time of session, or who, when appointed commissioner in any cause, shall undertake to attend upon the Court, when the state of the proof is ready to be prepared, and while the merits thereof are under discussion.

IV. That such proofs as are to be reported to the whole Court, shall (with the exception already mentioned) be only taken during the spring or autumn vacation, in order that the Commissioners may be at liberty to attend, without inconvenience to themselves; it being always understood, that the periods of attendance, as well as the place or places where the witnesses are to be examined, shall be adjusted, at their sight, by the Lord Ordinary, or by the Court, and that they may choose their own clerk or clerks; and as the Commissioners are to act in this matter under the special authority of the Court, it is recommended to them to exercise their own judgment, in the manner of conducting the proof, and particularly to allow no matter to be introduced which is not pertinent to the cause, nor any unnecessary pleading or altercation about the competency of questions, or the admissibility of witnesses, and to check the parties, if they attempt to load the proceedings with unnecessary evidence, or superfluous matter of any kind. It is likewise recommended to them, to attend to the rules of evidence, and to give their own deliverances, either *viva voce*, or in writing, as they see cause, upon any debate which may occur; it being always understood, that their whole proceedings shall be subject to the after consideration of the Court, upon application made by either party; in order to which the Commissioner himself, or those acting for the parties, may take such notes, on a separate paper, as they think proper, for the due information of the Court; but nothing shall enter the report, but what the Commissioner himself may think material.

V. That, when proofs are allowed by any of the Lords Ordinary, to be reported to himself, especially in matters of smaller moment, or where dispatch is necessary, his Lordship may, according to circumstances, order the commission, or other warrant, to be issued, either to Commissioners of the above description, or to any Sheriff, or Stewart-depute, or substitute, or any other inferior Magistrate, or the clerk, or assistant-clerk of any court, but in no case shall allow the parties, or their agents, to name their own Commissioners; and the same regulation may be observed, even in the case of proofs to be reported to the whole Court; providing always, that this last shall only be done upon application to the Court, and

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1800. special cause shewn, such as the necessity of immediate dispatch, or that the commission is granted merely for the examination of a party, or the exhibition of writings, or to expedite matters in a judicial sale, or that the proof is to be taken in a very distant part of the country, where none of the regular Commissioners can attend; and, in all such cases, the officiating Commissioner, of whatever description, shall attend to the recommendations contained in articles IV. and VII. hereof.

VI. That, in case it shall be necessary to examine witnesses forth of Scotland, the commission shall be directed to some person duly qualified, and with and under such regulations and instructions, as the Lord Ordinary, or the Court, shall think best adapted to the circumstances of the case, and to the practice hitherto observed.

VII. That, in the course of taking the depositions, if it shall appear to the Commissioner, that any witness is not disposed to tell the truth, or behaves in any unusual manner, it is recommended to him to take a note thereof at the time, by way of assistance to his memory, in case he should be appealed to, on that subject, by either of the parties, when the proof comes to be advised; or, if he thinks proper, he may annex the same to his report of the proof.

VIII. That when the proof is reported, the same shall be laid, by the clerk of Court, before the Lord Ordinary by whom it was allowed; and, if a state is to be prepared for the whole Court, the same shall be previously adjusted by the Lord Ordinary, (or, in his absence, by the Lord President,) with the assistance of the Commissioner, if thought necessary; and it is hereby declared, that the Court, in future, will give proper attention to the ancient manner of preparing states, and will not admit into the state, any more of the pleadings than are necessary for understanding the cause.

IX. Whereas it is just and reasonable, that the Commissioner employed in taking and reporting the proof, or whose assistance may be required in preparing the state, and likewise the clerk employed in writing the depositions or the prepared state, should be recompensed for his loss of time, travelling expences, and trouble, The Lords do hereby declare, that no prepared state, or proof reported, whether to the Lord Ordinary, or to the whole Court, shall hereafter be advised, until every such expence be settled and paid, under the direction of the Lord Ordinary, or of the Court; and that a certificate of this being done shall be signed and delivered into the process, by the clerk or depute-clerk of Court, before any such advising can take place.

Lastly, This act shall endure, and be in force, until the third sederunt-day of May 1802, and no longer, unless the same shall be further continued. And they appoint the same to be recorded in the Books of Sederunt, and to be published in the usual manner.

ILAY CAMPBELL, I. P. D.



I N D E X
T O
A C T S O F S E D E R U N T

F R O M

12th November 1790, to 11th March 1800.

Aberdeenshire.

Interim Sheriff appointed; 2d Dec. 1795.

Adjudication, Abbreviates of.

Principal Clerks of Session authorised to sign them, under the bankrupt-act; 26th Nov. 1793.

Advocates Library.

Session papers ordered to be boxed for it; 17th Jan. 1793.

Assistants of Clerks of Session

See *Fees*.

Assize of Bread.

See *Committee*.

Ayrshire.

Interim Sheriff-depute appointed; 2d February 1793.

Bankrupt-Act.

Committees respecting it; 2d Feb. 5th July 1793.
See *Abbreviates of Adjudication*.

Bankrupt, Fraudulent.

Sentence against John Cooper and John Fotheringham; 2d June 1791.

Bell, Mr Robert.

Committees respecting his Decisions, and Lectures on Conveyancing; 12th Nov. and 17th Dec. 1796.

Bill-Chamber.

Petitions against interlocutors in the Bill-Chamber to be intimated; 15th Nov. 1796.
Act concerning Bill-Chamber; 14th June 1799.
See *Committee*. *Fees*.

Box-days.

Regulations respecting box-days in the spring vacation; 24th Feb. 1791.

Bursars.

Delegates appointed for naming bursars of Mr Laurence Dundas's mortification; 25th Jan. 1793.

Charity Work-house.

See *Committee*.

Citations,

Citations, Edictal.

Act dispensing with executing them at church-doors, and recording the executions; 13th Nov. 1793.

Clerk-Register, Lord.

See *Ancient Manuscript*, and *Records*.

Collectors of Decisions.

Papers ordered to be boxed for them; 17th Jan. 1793.—Order renewed; 15th Feb. 1793.

Collectors authorised to publish Acts of Sederunt; 8th March 1799.

College of Justice.

Act of Sederunt imposing a temporary stent of 2 per cent. upon the Members of it; 27th Nov. 1798.

Commission, Interim.

To act as keeper of register of feifins of Renfrewshire; 22d Dec. 1792.

——— Sheriff-depute of Ayrshire; 2d Feb. 1793.

——— Commissary of St Andrew's; 3d June 1795.

——— Macer in the Court of Session; 12th Nov. 1795.

——— Sheriff of Aberdeenshire; 2d Dec. 1795.

——— Sheriff-depute of Renfrewshire; 11th March 1796.

——— Sheriff of Lanarkshire; 16th Feb. 1797.

——— Keeper of the register of feifins for Kinrosshire; 4th July 1798.

——— Commissary of St Andrew's; 27th Feb. 1799.

——— Keeper of the minute-book; 17th Dec. 1799.

Committee.

To consider dues payable to keeper of Inner-House rolls, macer, and extractors; p. 1.

For repairing Inner-House; 17th June 1791.

For Charity Work-house; 29th June 1791.

For regulating affize of bread; 3d March 1792.

To assist and concur with Magistrates of Edinburgh; 23d Jan. 1793.

To report on draught of bankrupt-act; 2d Feb. 1793.

For making regulations as to late bankrupt-act, &c.; 5th July 1793.

To consider and report regulations as to transmitting processes to the Bill-Chamber from inferior courts; 13th Feb. 1794.—Two Judges named of said committee; 7th July 1796.

To inquire into the state of prisons; 19th Dec. 1795; 29th June 1799.

To consider Act of Sederunt 11th March 1788, prolonging time of Lords Ordinary sitting in the Outer-House; 30th June 1796.

To consider the draught of a charter for incorporating the Society of Solicitors; 12th Nov. 1796.

To consider Mr Robert Bell's Decisions, &c. 12th Nov. and 17th Dec. 1796.

With regard to causes under L. 12 Sterling; 19th May 1798.

With regard to improvements on the Inner-House; 8th March 1799.

On Bill-Chamber regulations, renewed; 18th Jan. 1800.

Cooper, John.

Sentence against him; 2d June 1791.

Craigcrook Mortification.

Lord Glenlee appointed overseer of it; 6th Feb. 1798.

Cross: See Stirling.

Darby, Hew.

Sentence against him; 15th June 1799.

Douglas, Heron and Company.

Their bond to the Court ordered to be delivered up; 3d Feb. 1791.

Dunfermline,



Dunfermline, Prison of.

Act changing it until Whitsunday 1794; 15th May 1793.

Extractors.

See *Committee*.

Fees.

Act, allowing additional fee to macers and keepers of Parliament-house; 11th March 1791.

Regulating fees of keeper of Inner-House rolls; 11th March 1791.—Continuing fees at Bill-Chamber to the present clerks' servants; 6th June 1795.

Act regulating fees payable to assistants of the Clerks of Session; 10th March 1798.

Interim act, allowing certain additional fees to Andrew Miller, depute-clerk of the bills; 10th March 1798.

Act regulating fees of assistants of the Clerks of Session; 10th March 1798.

Fines and Amends.

Act for the more speedy and effectual method of levying of them; 26th March 1794.

Fotheringham, John.

Sentence against him; 2d June 1791.

Gazette, Edinburgh.

Sequestrations ordered to be published in it; 29th June 1793.

Inner-House.

Committees with respect to repairing it; 17th June 1791, and 8th March 1799.

Inrolment of Causes.

Act concerning inrolment of causes in the Inner-House; 16th Jan. 1798.

Keeper of Inner-House Rolls.

Act regulating his fees; 11th March 1791.

See *Committee*.

Keepers of Parliament-House.

See *Fees*.

Kinross-shire.

Interim keeper of register of feifins appointed; 4th July 1798.

Lanarkshire.

Interim Sheriff appointed; 16th Feb. 1797.

Letters of Publication.

To be executed only at market-cross of Edinburgh, pier and shore of Leith, and intimated by one advertisement in Edinburgh Gazette; 13th November 1793.

Little, William Charles.

Allowed to change his surname to Gilmour; 29th Jan. 1793.

Macers.

See *Committee, Fees and Commission*.

Macleod

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Macleod Bannatyne, Mr William.

Report on MSS. lodged by him ; 11th March 1798.

Magistrates of Edinburgh.

Their visitation of the Lords, and Lord President's address on the occasion ; 23d Jan. 1793.
See *Committee*.

Manuscript, Ancient.

Petition of Lord Clerk-Register respecting one found in the State Paper-Office, and procedure thereon ; 4th and 19th Dec. 1793.

Manuscripts.

Report on manuscripts lodged by Mr William Macleod-Bannatyne, advocate ; 11th March 1795.

Market-Cross.

Act removing the market-cross of Stirling ; 14th June 1792.

Miller, Andrew.

Interim act allowing him additional fees ; 10th March 1798.

Minute-book.

Interim keeper of it appointed ; 17th Dec. 1799.

Outer-House.

Act (11th March 1788,) prolonging the time of Lords Ordinary sitting in the Outer-House, continued by various prorogations ;—15th June 1791 ;—26th June 1792 ;—29th June 1793 ;—27th June 1794 ;—25th June 1795 ;—30th June 1796 ;—17th January 1797 ;—29th June 1797 ;—28th June 1798 ;—28th June 1799.

Petitions, Reclaiming.

Resolution respecting them ; 17th June 1791.

President, Lord.

His answer to the Lord Provost of Edinburgh ; 23d January 1793.

Prisons.

Committees to inquire into the state of prisons ; 19th December 1795 ; 29th June 1799.

Act changing the prison of Dunfermline ; 15th May 1793.

Processes.

Resolution with regard to causes under L. 12 Sterling ; 6th July 1796 ; 19th May 1798.

Act concerning the enrolment of processes, and returning them to the Clerks ; 16th Jan. 1798.

Act concerning the Transmission of Processes from Inferior Courts, in cases where bills of advocacy are offered ; 17th Jan. 1799.

Proofs.

Act concerning them ; 11th March 1800.

Ranking and Sale.

Acts ordaining Common Agents to lodge States ; 9th July 1791 ; 10th July 1792.

Act concerning judicial sales and rankings at the instance of creditors ; 11th July 1794.

Records.

I N D E X.

Records.

Petition Lord Clerk-Register to have certain records deposited in his office, and procedure thereon; p. 33.; 11th March 1795.

Renfrewshire.

Interim keeper of register of feifins appointed; 22d Dec. 1792.

Interim Sheriff-depute appointed; 11th March 1796.

and see

4 Dec 1793

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Replies.

Acts; 10th Dec. 1777, and 5th Feb. 1783, concerning replies continued; 16th Feb. 1791.—Made perpetual; 28th Feb. 1792.

St Andrew's.

See Interim Commission.

Scot, Ninian.

Sentence against him for vitiating a bill; 24th May 1794.

Scots Law, Professor of.

Session-papers ordered to be boxed for him; 15th Feb. 1793.

Seal of Court.

10th March 1798.

Sederunt, Acts of.

Collectors of Decisions authorised to publish the Acts of Sederunt; 8th March 1799.

Sequestrations.

To be advertised once in Edinburgh Gazette; 29th June, and 13th Nov. 1793.

Sequestrations during the vacation to be inserted in the minute-book; 4th March 1800.

Session-Papers.

Papers ordered to be boxed for the Advocates Library, Professor of Scots Law, and for the Collectors of Decisions; 17th Jan. and 15th Feb. 1793.

Solicitors, Society of.

Committee of the Lords to consider draught of their charter; 12th Nov. 1796.

Stent.

Act of Sederunt imposing a stent of 2 *per cent.* upon the members of the College of Justice, for the maintenance of indigent wives and families of sailors and soldiers; 27th Nov. 1798.

Stirling, Market-Cross of,

Act removing it; 14th June 1792.

Two-penny Act.

Lord Methven named one of the arbiters in it; 27th June 1799.

Writers' Clerks, &c.

Procedure on their petition; 29th Jan. 1800.

Petition Lord Clerk-Register to have certain records deposited in his office, and
return thereof: p. 337, with March 1793.

Interim keeper of register of feilds appointed: and Dec 1791.
Interim sheriff-deput appointed: and March 1792.

Act: 1791, 1792, 1793, and 1794, containing replies continued: 18th Feb
1791. Made petition: 22nd Feb 1791.

See Interim Commission.
St Andrew's.
Scott Ninian.

Sentences against him for visiting a bill: 24th May 1791.
Scotts Law, Professor of.
Session papers ordered to be boxed for him: 24th Feb 1792.

Seal of Court.
18th March 1792.
Sederunt, Acts of.
Collectors of Decisions submitted: the Acts of Sederunt: 8th March 1793.

To be advertised once in Edinburgh: 20th June and 1st Nov 1793.
Separations during the vacation to be inserted in the minute book: 24th March 1800.

Session Papers.
Papers ordered to be boxed for the Advocates, Professor of Scots Law, and for
the Collectors of Decisions: 17th Jan and 1st Feb 1793.

Solicitors, Society of.
Committee of the Lords to consider draught of their charter: 18th Nov 1796.
Stent.

Act of Sederunt imposing a fine of 5 shillings upon the members of the College of Jur-
ists for the non-payment of indigent wives and families of jurors and witnesses: 27th Nov
1793.

Selling, Market-Cross of.
Act removing it: 1st June 1791.

Two-penny Act.
And likewise named one of the arbiters in it: 27th June 1791.

Whitaker, Clerk, Secy.
Procedure on their petition: 20th Jan 1800.

